रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. No. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 52] नई दिल्ली, दिसम्बर 24—दिसम्बर 30, 2017, शनिवार/ पौष 3—पौष 9, 1939
No. 52] NEW DELHI, DECEMBER 24—DECEMBER 30, 2017, SATURDAY/PAUSHA 3—PAUSHA 9, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2889.—केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, त्रिपुरा राज्य सरकार गृह विभाग की दिनांक 07.02.2017 की अधिसूचना संख्या एफ. 21(2)-पीडी/2012/365 द्वारा दी गई सहमति से एतद्द्वारा दिनांक 12.11.16 से 17.11.16 की अवधि के दौरान श्री दिलीप देववर्मा (कर्मचारी सं. 59105) द्वारा एसडब्ल्यूओ-ए मेलाघर शाखा, यूको बैंक सिपाहीजाला जिला, त्रिपुरा में अपने तीन एस/बी खातों में सरकारी विमुद्रीकरण योजना के अधीन 500 रु. और 1000 रु. के विशिष्ट बैंक नोट (एसपीएन) के 25,44,500 रु. की भारी रकम जमा करने, जो उनके विदित आय के स्रोतों से अधिक है और पीसी अधिनियम, 1988 (1988 की धारा सं. 49) की धारा 13(1)(ङ) के अधीन दंडनीय है तथा उपरोक्त अपराधों के संबंध में प्रयास, दुष्प्रेरण और षडयंत्र तथा उसी लेन-देन में किए गए किसी अन्य अपराध/अपराधों या उन्हीं तथ्यों से उद्भूत अपराधों के अन्वेषण तथा दोषी व्यक्तियों के विरुद्ध साथ-साथ दांडिक अभियोजन शुरू करने के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार एतद्द्वारा संपूर्ण त्रिपुरा राज्य पर करती है।

[फा.सं. 228/07/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 21st December, 2017

S.O. 2889.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Estabilshment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Tripura, Home Department vide Notification No. F. 21(2)-PD/2012/365 dated 07.02.2017 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Estabilshment to the whole of the state of Tripura for investigation of offences relating to huge cash deposit of specified Bank notes (SBN) of Rs. 500 and Rs. 1000 under Government demonetization scheme total amounting of Rs. 25,44,500 by Shri Dilip Debbarma (Employee No. 59105) SWO-A, Melaghar Branch of UCO Bank, Sepahijala District, Tripura in his three S/B account during the period from 12.11.2016 to 17.11.2016, which is disproportionate to his known sources of income and punishable u/s 13(1)(e) of P.C. Act, 1988 (Act No. 49 of 1988) and attempts, abetments and conspiracies in relation to or in connection with the offences mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts and simultaneously launching of criminal prosecution against the guilty persons.

[F. No. 228/07/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 18 दिसम्बर, 2017

का.आ. 2890.—राजनयिक और कोंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार के द्वारा श्री विक्रम पाल सिंह, सहायक अनुभाग अधिकारी को दिनांक 18 दिसम्बर, 2017 से भारत के राजदूतावास, बुकारेस्ट में सहायक कोंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2017]

प्रकाश चन्द, निदेशक (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(C.P.V. DIVISION)

New Delhi, the 18th December, 2017

S.O. 2890.—In pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri Vikram Pal Singh, Assistant Section Officers in Embassy of India, Bucharest to perform the Consular services as Assistant Consular Officers with effect from 18th December, 2017.

[No. T-4330/01/2017]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 18 दिसम्बर, 2017

का.आ. 2891.—राजनयिक और कोंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार के द्वारा श्री आशुतोष कुमार हर्ष, सहायक अनुभाग अधिकारी को दिनांक 18 दिसम्बर, 2017 से भारत के प्रधान कोंसुलावास, सैन फ्रांसिस्को में सहायक कोंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2015]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 18th December, 2017

S.O. 2891.—In pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri Ashutosh Kumar Harsh, Assistant Section Officers in Consulate General of India, San Francisco to perform the Consular services as Assistant Consular Officer with effect from 18th December, 2017.

[No. T-4330/01/2015]

PRAKASH CHAND, Director (Consular)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 27 दिसम्बर, 2017

का.आ. 2892.—तेल उद्योग (विकास) अधिनियम 1974 (1974 का 47) की धारा (3) की उपधारा (3)(ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्वारा श्री शशि शंकर, अध्यक्ष एवं प्रबंध निदेशक, ओएनजीसी को दिनांक 01.10.2017 से 30.09.2019 अथवा अगले आदेश होने तक, जो भी पहले हो, तेल उद्योग विकास बोर्ड के सदस्य के रूप में नियुक्त करती है।

[फा. सं. जी-38011/41/2016-वित्त- I]

पेरिन देवी, निदेशक (आईएफडी)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 27th December, 2017

S.O. 2892.—In exercise of the Powers conferred by Sub-Section (3)(c) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri Shashi Shanker, CMD, ONGC as a member of the Oil Industry Development Board w.e.f. 01-10-2017 to 30-09-2019 or until further orders, whichever is earlier.

[F.No. G-38011/41/2016-Fin.-I]

PERIN DEVI, Director (IFD)

नई दिल्ली, 27 दिसम्बर, 2017

का.आ. 2893.—तेल उद्योग (विकास) अधिनियम 1974 (1974 का 47) की धारा (3) की उपधारा (3)(ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्वारा श्री बी.सी. त्रिपाठी, अध्यक्ष एवं प्रबंध निदेशक, गेल को दिनांक 01.08.2017 से 31.07.2019 अथवा अगले आदेश होने तक, जो भी पहले हो, तेल उद्योग विकास बोर्ड के सदस्य के रूप में नियुक्त करती है।

[फा. सं. जी-38011/41/2016-वित्त-I]

पेरिन देवी, निदेशक (आईएफडी)

New Delhi, the 27th December, 2017

S.O. 2893.—In exercise of the Powers conferred by Sub-Section (3)(c) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri B.C. Tripathi, CMD, GAIL as a member of the Oil Industry Development Board w.e.f. 01-08-2017 to 31-07-2019 or until further orders, whichever is earlier.

[F.No. G-38011/41/2016-Fin.-I]

PERIN DEVI, Director (IFD)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 20 दिसम्बर, 2017

का.आ. 2894.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर कॉमन पंचाट (संदर्भ संख्या 45/2007, 80/2007, 105/2007, 118/2007, 05/2008, 09/2008, 29/2008, 36/2008 और 41/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.12.2017 को प्राप्त हुआ था।

[सं. एल-29012/56/2006-आईआर (एम),

सं. एल-29012/17/2007-आईआर (एम),

सं. एल-29012/35/2006-आईआर (एम),

सं. एल-29012/38/2007-आईआर (एम),

सं. एल-29012/78/2007-आईआर (एम),

सं. एल-29012/82/2007-आईआर (एम),

सं. एल-29012/06/2008-आईआर (एम),

सं. एल-29012/36/2008-आईआर (एम),

सं. एल-29012/43/2008-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 20th December, 2017

S.O. 2894.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Common Award (Ref. No. 45/2007, 80/2007, 105/2007, 118/2007, 05/2008, 09/2008, 29/2008, 36/2008 & 41/2008) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 06.12.2017.

[No. L-29012/56/2006-IR (M),

No. L-29012/17/2007-IR (M),

No. L-29012/35/2006-IR (M),

No. L-29012/38/2007-IR (M),

No. L-29012/78/2007-IR (M),

No. L-29012/82/2007-IR (M),

No. L-29012/06/2008-IR (M),

No. L-29012/36/2008-IR (M),

No. L-29012/43/2008-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 06th November, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

COMMON AWARD

(i) C.R. No. 45/2007

I Party	**II Party**
Smt. B. Rangamma, W/o Boregowda, Muddannahalli Village, Jamboor Post, Nuggehalli Hobli, Channarayapatna Taluk, Hassan District.	The Managing Director, Mysore Minerals Limited, No. 39, M. G. Road, Bangalore.- 560001

The Central Government vide Order No.L-29012/56/2006-IR(M) dated 07.03.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

"Whether the management of Mysore Minerals Limited is justified in terminating the services of Smt. B. Rangamma w.e.f. 22.05.1998? If not, to what relief the workman is entitled to?"

(ii) C.R. No. 80/2007

I Party	**II Party**
Sh. J. Thiramalegowda, S/o Late Jade Rangegowda, MML Worker, Hullikere Village, Attihalli Post, Nuggehalli Hobli, Channarayapatna Taluk, Hassan District.	The Managing Director, Mysore Minerals Limited, No. 39, M. G. Road, Bangalore.- 560001

The Central Government vide Order No. L-29012/17/2007-IR(M) dated 16.05.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

"Whether the management of Mysore Minerals Limited is justified in terminating the services/premature superannuating the services of Sri. J. Thirumalegowda w.e.f. 16.04.1998? If not, to what relief the workman is entitled to?"

(iii) C.R. No. 105/2007

I Party	**II Party**
Smt. Thimmamma, W/o Mari Gowda, Kembal Village and Post, Bagur Hobli, Channarayapatna Taluk, Hassan District.	The Managing Director, Mysore Minerals Limited, No. 39, M. G. Road, Bangalore.- 560001

The Central Government vide Order No. L- 29012/35/2006-IR(M) dated 23.08.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

"Whether the action of the management of Mysore Minerals Limited is justified in terminating the services of Smt. Thimmamma w.e.f. 29.06.1998 is legal and justified? If not, to what relief the workman is entitled to?"

(iv) C.R. No. 118/2007

I Party	**II Party**
Sh. C. Rangappa, S/o Late Hanumegowda, Chavenahalli Village, Nagrnavile Post, Bagur Hobli, Channarayapatna Taluk, Hassan District.	The Managing Director, Mysore Minerals Limited, No. 39, M. G. Road, Bangalore.- 560001

The Central Government vide Order No. L-29012/38/2007-IR(M) dated 22.08.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

"Whether the action of the management of M/s. Mysore Minerals Limited in terminating the services of Sri. C. Rangappa w.e.f. 09.09.1998 is legal and justified? If not, to what relief the workman is entitled and from which date?"

(v) C.R. No. 05/2008

I Party	**II Party**
Sh. V. Rangegowda, S/o Late Venkate Gowda, Mavinahalli Village, Buvanahalli Post, Nuggehalli Hobli, Channarayapatna Taluk, Hassan District.	The Managing Director, Mysore Minerals Limited, No. 39, M. G. Road, Bangalore.- 560001

The Central Government vide Order No.L-29012/78/2007-IR(M) dated 06.02.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

"Whether the termination of Sh. V. Rangegowda by the management of Mysore Minerals Limited w.e.f. 30.05.1998 is justified? If not, to what relief the workman is entitled to?"

(vi) C.R. No. 09/2008

I Party	**II Party**
Smt. Shankaramma, W/o late Kattebasappa, MML Worker, Rajapur Village, Post and Taluk, Bellary District, Karnataka	The Managing Director, Mysore Minerals Limited, No. 39, M. G. Road, Bangalore.- 560001

The Central Government vide Order No. L-29012/82/2007-IR(M) dated 06.02.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 has made this reference for adjudication with following Schedule:

SCHEDULE

"Whether the action of Mysore Minerals Limited, Bangalore in removal from service w.e.f. 30.06.1998 in respect of Smt. Shankaramma W/o Late Kattebasappa 1998 is justified? If not, to what relief the workman is entitled to?"

(vii) C.R. No. 29/2008

I Party	**II Party**
Smt. B. Lakshmamma, W/o Boregowda, Averehalli Village, Jamboor Post, Nuggehalli Hobli, Channarayapatna Taluk, Hassan District, Karnataka.	The Managing Director, Mysore Minerals Limited, No. 39, M. G. Road, Bangalore.- 560001

The Central Government vide Order No. L-29012/06/2008-IR(M) dated 02.04.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 has made this reference for adjudication with following Schedule:

SCHEDULE

"Whether the termination of Smt. B. Lakshmamma by the management of Mysore Minerals Limited w.e.f 29.05.1998 is justified? If not, to what relief the workman is entitled to?"

(viii) C.R. No. 36/2008

I Party	**II Party**
Smt. M. Subbamma, W/o Late Masthi Gowda, Honnamaranahalli Village, Jamboor Post, Nuggehalli Hobli, Channarayapatna Taluk, Hassan District, Karnataka.	The Managing Director, Mysore Minerals Limited, No. 39, M. G. Road, Bangalore.- 560001

The Central Government vide Order No. L-29012/36/2008-IR(M) dated 02.04.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 has made this reference for adjudication with following Schedule:

SCHEDULE

"Whether the termination of Smt. M .Subbamma by the management of Mysore Minerals Limited w.e.f 26.05.1998 is justified? If not, to what relief the workman is entitled to?"

(ix) C.R. No. 41/2008

I Party	**II Party**
Smt. Dodda Honuramma, W/o Late Sh. Krishnappa, Tara Nagar Village and Post, Dandur Taluk, Bellary District.	The Managing Director, Mysore Minerals Limited, No. 39, M. G. Road, Bangalore.- 560001

The Central Government vide Order No. L-29012/43/2008-IR(M) dated 02.04.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 has made this reference for adjudication with following Schedule:

SCHEDULE

"Whether the action of M/s Mysore Minerals Limited, Bangalore in removal from service w.e.f 30.06.1998 in respect of Smt. Dodda Honuramma W/o Late Shri. Krishnappa is justified? If not, to what relief the workman is entitled to?"

Appearance :

I party : M/s K.T. Govinde Gowda & Sh. C.G. Dileep Gowda, Advocates

II party : Mr. T.K. Vedamurthy & Mr. L. Venkatarama Reddy, Advocates

1. Brief details mentioned in the claim statement by I Party are as follows:-

(i) In CR No. 45/2007, the I Party submits that on 04.09.1982, she has joined the service of the II Party management at its Mining Unit viz., Jamboor Chromite Mines, Channarayapatna Taluk, Hassan District, as a Mining Worker. At the time of joining the I Party has furnished her age as 25 years i.e., her date of birth being 01.12.1957. Further, the II Party, Jamboor Chromite Mines Officials, orally refused to allow the I Party to do her work w.e.f 22.05.1998. The I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), and the Central Government have referred the Reference in CR No.45/2007.

(ii) In CR No. 80/2007, the I Party submits that on 07.08.1979, he has joined the service of the II Party management at its Mining Unit viz., Jamboor Chromite Mines, Channarayapatna Taluk, Hassan District, as a Mining Worker. At the time of joining the I Party has furnished his age as 37 years i.e., his date of birth being 07.04.1942. Further, the II Party, Jamboor Chromite Mines Officials, orally refused to allow the I Party to do his work w.e.f 16.04.1998. The I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), and the Central Government have referred the Reference in CR No.80/2007.

(iii) In CR No. 105/2007, the I Party submits that on 15.01.1979, she has joined the service of the II Party management at its Mining Unit viz., Byrapura Chromite Mines, Channarayapatna Taluk, Hassan District, as a Mining Worker under token no. 263. At the time of joining the I Party has furnished her age as 31 years i.e., her date of birth being 15.01.1948. Further, the II Party, Byrapura Chromite Mines Officials, orally refused to allow the I Party to do her work w.e.f 29.06.1998. The I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), Hubli and the Central Government have referred the Reference in CR No. 105/2007.

(iv) In CR No. 118/2007, the I Party submits that on 19.12.1977, he has joined the service of the II Party management at its Mining Unit viz., Byrapura Chromite Mines, Channarayapatna Taluk, Hassan District, as a Mining Worker under token No. 344. At the time of joining the I Party has furnished his age as 25 years i.e., his date of birth being 19.12.1952. Further, the II Party, Byrapura Mines Officials, orally refused to allow the I Party to do his work w.e.f 09.09.1998. The I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), Hubli and the Central Government have referred the Reference in CR No. 118/2007.

(v) In CR No. 05/2008, the I Party submits that on 17.12.1978, he has joined the service of the II Party management at its Mining Unit viz., Thagadur Chromite Mines, Channarayapatna Taluk, Hassan District, as a Mining worker. At the time of joining the I Party has furnished his age as 29 years i.e., his date of birth being 17.12.1949. Further, the II Party, Thagadur Mines Officials, orally refused to allow the I Party to do his work w.e.f. 30.05.1998. The I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), Hubli and the Central Government have referred the Reference in CR No. 05/2008.

(vi) In CR No. 09/2008, the I Party submits that on 03.09.1980, she has joined the service of the II Party management at its Mining Unit viz., Hublagandi Iron Ore Mines and later on transferred to Thimmappanagudi Iron Ore Mines, Sandur Taluk, Bellary District, as a Mining worker. At the time of joining the I Party has furnished her age as 30 years i.e., her date of birth being 17.01.1949. Further, the II Party, Thimmappanagudi Iron Ore Mines Officials, orally refused to allow the I Party to do her work w.e.f. 30.06.1998. The I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), Hubli and the Central Government have referred the Reference in CR No. 09/2008.

(vii) In CR No. 29/2008, the I Party submits that on 16.06.1979, she has joined the service of the II Party management at its Mining Unit viz., Thagadur Chromite Mines, Channarayapatna Taluk, Hassan District, as a Mining worker. At the time of joining the I Party has furnished her age as 29 years i.e., her date of birth being 16.06.1950. Further, the II Party, Thagadur Chromite Mines Officials, orally refused to allow the I Party to do her work w.e.f. 29.05.1998. The I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), Hubli and the Central Government have referred the Reference in CR No. 29/2008.

(viii) In CR No. 36/2008, the I Party submits that on 01.09.1979, she has joined the service of the II Party management at its Mining Unit viz., Thagadur Chromite Mines, Channarayapatna Taluk, Hassan District, as a Mining worker. At the time of joining the I Party has furnished her age as 34 years i.e., her date of birth being 01.09.1945. Further, the II Party, Thagadur Chromite Mines Officials, orally refused to allow the I Party to do her work w.e.f. 26.05.1998. The I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), Hubli and the Central Government have referred the Reference in CR No. 36/2008.

(ix) In CR No. 41/2008, the I Party submits that on 01.06.1977, she has joined the service of the II Party management at its Mining Unit viz., Thimmappanagudi Iron Ore Mines, Sandur Taluk, Bellary District, as a Mining worker. At the time of joining the I Party has furnished her age as 31 years i.e., her date of birth being 01.08.1946. Further, the II Party, Thimmappanagudi Iron Ore Mines Officials, orally refused to allow the I Party to do her work w.e.f. 30.06.1998. The I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), Hubli and the Central Government have referred the Reference in CR No. 41/2008.

2. Brief Common details mentioned on behalf of I Party are as follows:-

The date of birth of the I Party, in fact, has been entered in all the statutory records like EPF, B-register and Service records, etc. The I Party is entitled to continue in the service with the II Party up to the reaching of the age of superannuation i.e., 58 years in the II Party Organization. The II Party by way of an eye wash conducted the so called illegal Medical Examination for the purpose of removing the I Party from the service before reaching the age of superannuation. Further, the II Party has terminated the I Party on the plea that the I Party has reached the superannuation age of 58 years as per the so called illegal Medical Examination. After illegal termination, the I Party has faced unemployment problem and financial hardship, not only by I Party but also the family members of I Party. The entire family has depended only upon the earnings of the I Party in the II Party Organization. The II Party/Management similarly, has, prematurely, retired the co-workers of the I Party on the ground of Medical unfitness and also as per the age certificate, issued by the Medical Officer. The said co-workers have challenged their pre-matured retirement and the age certification, before the Hon'ble High Court of Karnataka, viz.,

(i) Writ Petition No. 5615/2001 between Smt. K.Dundamma Vs MML, and the same Management of II Party challenged the same in Writ Appeal No. 3460/2001 C/W W.No. 3459/2001. The said Appeal has been rejected on 12.06.2002 confirming the single Judge order dated 29.03.2001. In view of the said decision the Management, reinstated the above mentioned pre-matured retired employee with payment of back wages, and with continuity of service thereon.

(ii) Writ Petition No. 26101/2001, C/W W.P. Nos.23798/2001, 23797/2001 & 23794/2001 filed by Sri V.C. Range Gowda and 8 others Vs MML, and the same have been allowed on 01.06.2006.

On account of the illegal payment and other lapses, in the Management of II Party, it has to face administrative problems. The II Party adopted its own tactics, ways and means for terminating the Mining Workers in short cut methods and also, in an illegal and irregular manner by adopting anti-labour and un-fair labour practice and victimized the I Party and other co-workers by removing them enmasse by resorting to the so-called Medical Examination during the year 1998 in illegal and irregular manner, without disclosing the true fact, to the I Party and also without notifying the so-called Medical Examination, i.e., not by a Doctor of a Rank of Assistant Civil Surgeon as defined in Rule 29-C of the Mines Rules 1995. Hence, the so-called Medical Examination conducted by the II Party is illegal and irregular, and the same is not having any legal sanctity and not sustainable in law, as it is violative of Rule 29-C. The I Party has repeatedly requested the officials of the II Party to provide the work to I Party till reaching the age of superannuation i.e., 58 years. But all the efforts made by I Party to persuade the II Party to take the I Party, on duty, proved in vain because of hostile and vindictive attitude on the part of the II Party. The II Party has no right to refuse the employment to the I Party or to remove the name of the I Party from the muster rolls in the unilateral manner, without following the due process of Law. The II Party used the above illegal, imaginary, hypothetical and unscientific Medical report, as its tool for unilaterally deciding the age of I Party and other workers. The II Party unilaterally refused employment to the I Party before the age of superannuation even though the I Party is hale and healthy and entitled to work, up to the reaching of the age of superannuation i.e., 58 years. The II Party has not followed the Mandatory provision of Section 25 F, G, H & N of the Industrial Dispute Act, 1947 and Rules 78 and 79 thereon, and the action of the Management is, therefore, void-ab-initio as laid by the Hon'ble Supreme Court of India in the case Sundaramani Vs State Bank of India, Santhosh Gupta Vs State Bank of Patiala, Rober D'Souza Vs Southern Railway, K.S.R.T.C. Bangalore Vs Boraiaha and others and also the same is violative of the Provisions of Industrial Dispute Act, 1947. The II Party has un-necessarily created hardship to the I Party by not providing employment. The II Party Management is not justified in retrenching the services of the I Party in the summary manner without following the principals of Natural justice and fair play. Further, apart from the violation of various provisions of the I.D. Act as stated above, the II Party violated its own Certified Standing Orders. The II Party acted contrary to its own Certified Standing Orders/Service Rules for effecting the premature, superannuation by way of illegal termination. The I Party submits that, the II Party failed to issue 3 months prior notice or tendered payment of 3 months salary to the I Party before termination of service of the I Party under Rule 24. The I Party belongs to socially and economically weaker section and also, the I Party is the Rural based worker and used to work in Mines, which is in a remote place of the village and the I Party is also an illiterate worker belonging to Economically weaker section & not a matching party to fight against the II Party for the injustice done by the II Party. The I Party is facing financial hardship and mental agony due to stoppage of his/her monthly earnings in the II Party organization and also, due to illegal termination. Also, the I Party is not able to maintain himself and the family with day to day, food and basic needs. The I Party has faced the financial hardship to reach the Labour Department like Assistant Labour Commissioner and Conciliation Officer (C), Hubli from I Party's place, for raising the dispute and also, to set right the I Party's grievances. The Officials of the II Party/Management have taken undue advantage of I Party's poverty, illiteracy, economic weakness and social weakness. Ultimately with great hardship, mental agony and with the help of well wishers, the I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), Hubli. The I Party is entitled for back wages, continuity of service and other consequential benefits from the date of refusal of employment. The II Party has violated the Provisions of I.D. Act as well as its own Certified Standing Orders/Service Rules as stated above. Under the I.D. Act there is no limitation prescribed for raising the dispute and the Article 137 of Schedule to the limitation Act is not applicable to proceedings under I.D. Act. This point is repeatedly decided by the Hon'ble Supreme Court of India and Hon'ble High Courts of various states namely,

(i) LLJ-II-2001-pg788-792 [SC], Sapan kumar Pandit Vs U.P. State Electricity Board and others.

(ii) LLJ-I-1999-pg 1260-1265 [SC], Ajaib Singh Vs Sirhind Co-operative Marketing-cum-processing Service Society.

(iii) LLJ-II-1999-pg-482-483[SC], Mahavir Singh Vs U.P. State Electricity Board and others.

(iv) LLJ-I-2003-pg 412-414 [MP], Ramadhar Tiwari Vs Union of India and others.

(v) LLJ-I-1994-pg 468-471 [All], U.P. State Spinning Mills Co. Vs State of U.P & Others

(vi) LLJ-II-2003-pg 1143-1145[Ori], Management of Aska Co-operative Central Bank Ltd. Vs State of Orissa

(vii) LLJ-I-2002-pg-204-206 [Mad], E.E. Construction Division 2, Mannarpuram, Trichy and Another Vs M.Gajapathy and Another

(viii) LLJ-I-2002-pg-1079-1081[Del], Mangal Singh Vs Presiding Officer, Industrial Tribunal No.1, Delhi and Another

(ix) LLJ-I-2002-pg-1129-1132[Bom], Haribhau S/o. Gaman Waghchaure Vs State of Maharastra and Another.

Therefore, the I Party prays this Court to pass an award by holding that the action of the II Party Management is not justified in terminating the services of I Party, namely, prematured superannuation of the services of the I Party and also to direct the II Party to reinstate the I Party, with continuity of service, with payment of Full back wages and other consequential benefits from the date of termination till providing employment/reaching the age of superannuation as per the date of birth details registered in the Statutory records like B-register and EPF records and Service records maintained by the II Party and EPF Authorities and to pay the interest at the rate of 18% from the said due date and also up to the date of payment and further award of cost of the present proceedings, in the interest of justice and also, equity.

3. Brief Common submissions made on behalf of II Party in the counter statement are as follows:-

The II Party states that, the dispute raised by the I Party is time barred and belated, and filed after the lapse of time. Further, the I Party has waited for the result in the case filed by the co-workers, who approached Hon'ble High Court of Karnataka. The success of co-worker of I Party in W.P. No. 5615/2001 and 26101/2001 before Hon'ble High Court of Karnataka inspired the I Party to file this dispute after the lapse of time. Hence, the conduct of the I Party does not deserve any relief at the hands of this Tribunal. Further, the II Party states that, the dispute raised by the I Party is liable to be dismissed on the ground of delay and latches, since the claim made by the I Party is stale and time barred. The II Party has conducted the Medical Examination and the said expert team have examined the I Party and found that, the I Party is not capable to work in a mine, in view of the fact that, the I Party has already reached the age of more than 58 years as on the date of Medical Examination. Further, as per the decision of Management, I Party has been terminated and also given opportunity to prefer an appeal before Appellate Medical Board within 30 days, if the I Party is aggrieved by the said Medical Report. The I Party, who has amicably received the terminal benefits from the II Party, has no right to raise present dispute, after the lapse of time, at the instigation, for the wrongful gain. It is relevant to submit that, the dispute referred by Government of India is itself not maintainable in law. Further, there is no Industrial Dispute existed or is apprehended. The Medical Examination has been conducted in Scientific Manner on thorough investigation. The I Party is not entitled for any benefits as per law. The I Party is happily working elsewhere since from the date of termination. Further, the statement of the I Party that, the II Party officials failed to consider the reasonable request of the I Party is totally incorrect and false. In fact, the I Party is employed elsewhere and earning salary. The I Party has filed this dispute only for wrongful gain, at the instigation of well-wishers, as admitted by the I Party in the claim statement. The II Party has not acted illegally or arbitrarily. Therefore, the II Party prays to dismiss the dispute filed by the I Party with exemplary costs, in the interest of justice and equity.

4. Already this Court has passed common award dated 27.08.2014. Thereafter, in Writ Petition the Hon'ble Karnataka High Court, has passed the following Order:- "The matter is remanded to the Central Government Industrial Tribunal Cum- Labour Court for fresh adjudication of the dispute. The Tribunal shall decide the dispute after giving notice to all the parties and pass an award in accordance with law. All the contentions of both the parties are left open." Further, notices have been sent for both sides and additional evidence recorded and arguments heard and after the careful perusal and appreciation of material records in the proper perspective the present Common Award is passed.

5. The crucial points/issues that arise for consideration in the present matter are as follows:-

(i) Whether the present claim has to be rejected on the ground of delay and latches as submitted by the II Party?

(ii) Whether the I Party has to prefer an appeal as against the medical certificate issued by the medical officer as submitted by the II Party in the counter statement?

(iii) Whether after the receipt of the terminal benefits, the I Party cannot raise any dispute in the present case?

(iv) Whether the I Party is entitled to get the relief as claimed in the claim statement, after the careful appreciation of the evidences adduced and documents produced by both the parties, in proper perspective?

6. Analysis, Discussion and Findings with regard to the above mentioned point/issue No. 1:-

The I Party has clearly stated in the claim statement itself, and also in the deposition that, I Party belongs to socially and economically weaker section, and the I Party is the rural based worker, and used to work in mines which is in a remote place of a village and I Party is also an illiterate worker, belonging to economically weaker section, and not a fit person, to fight against the II Party and the I Party has repeatedly requested the officials of II Party mines for

permitting the I Party to work and also, due to I Party's acute poverty, I Party has faced huge financial hardship to reach the Labour Department like Assistant Labour Commissioner and Conciliation Officer (C), Hubli from I Party's place, for raising the dispute and also, to set right I Party's grievances and in such circumstances, only the delay has happened for raising the dispute and the delay caused is not intentional and deliberate one, but only due to the above mentioned various reasons. The II Party has not specifically denied the above mentioned statements made by the I Party in the claim statement. Further, the I Party has also stated that, the officials of the II Party/Management have taken undue advantage of I Party's poverty, illiteracy, economic and social weakness by way of refusing employment, and also, after knowing fully, that the I Party is most incapable in approaching the Labour Authority for redressal of the I Party's grievances. The said details are also not specifically disputed by the II Party. Further, I Party has clearly stated in the claim statement that ultimately with great hardship, mental agony and with the help of well wishers, the I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), Hubli and the present central reference has been made to this Court by the Government of India, as per the above mentioned details. The said submissions made on behalf of I Party are also not specifically disputed on behalf of the II Party. On the other hand, the Assistant Manager of II Party, namely MW-1, has categorically admitted in his evidence that, I Party is an illiterate person. Further, the I Party has filed copies of Order passed in W.P. No. 5615/2001 dated 29.03.2001, W.A. No. 3460/01 c/w W.A. No. 3459/01 dated 12.06.2002 and W.P. No. 26101/01 c/w W.P. Nos. 23798/01, 23797/01 & 23794/01 dated 01.06.2006, as exhibits marked herein below and also MW-1 has admitted in his evidence that the success of the said co-workers in the said Writ Petition and Writ Appeal has inspired the I Party to file the present reference. In the above mentioned facts and circumstances, it is seen that, the I Party is justified in claiming the legal and statutory rights and benefits, due to the unlawful and illegal ways and means followed by the II Party to terminate the service of I Party, without following the principles of natural justice.

7. Further, the I Party has pointed out, in the claim statement, itself that, there is no limitation prescribed for raising the dispute and Article 137 Schedule of the Industrial Dispute Act is not applicable to the present case. Further, the Hon'ble Supreme Court of India, dated 03.12.2010, Mr. Hon'ble Justice. P. Sathasivam and Mr. Hon'ble Justice B.S. Chauhan, in Civil Appeal No. 10231/2010, between Kuldeep Singh Vs G.M, Instrument Design Development and Facilities Centre and Another, it is clearly held as follows:- "The Labour Court dismissed the claim of the appellant on ground of delay (of five and half years) in raising the dispute. The High Court confirmed the Labour Court's award. Hence this present appeal. The impugned award was set aside with costs of Rs. 50,000 to be paid by respondent-management to appellant." The Hon'ble Supreme Court observed that, there is no time limit prescribed for reference under section 10 of the Industrial Dispute Act, 1947. In the present case also, on a careful perusal of above said peculiar facts and vital circumstances and also due to the fact that, the I Party is facing poverty, illiteracy, economic and social weakness and also in the light of the above mentioned various citations, mentioned in the claim statement, it is seen that, the II Party is not justified in raising the objection to the effect that present reference is not maintainable, due to the delay and latches. The I Party in the claim statement as well as in the evidence has pointed out that, the I Party is an illiterate and the I Party has repeatedly requested the II Party officials to provide employment in the II Party Organisation. Further, the MW-1, namely the Assistant Manager of the II Party has also admitted that I Party is an illiterate person and it is true to suggest that in the mines there is no shelter from sun and rain and it is true to suggest that there is no health unit and it is true to suggest that, the working conditions as per the mining act have not been provided at the mines. In such circumstances, it is crystal clear that, II Party has not provided the basic and statutory and also necessary facilities, for the proper working conditions and also, for the welfare of the I Party workers.

8. Further, Industrial Dispute Act is a social legislation brought into existence after various Industrial Revolutions, stage by stage and the said act has been enacted to provide minimum and basic facilities for workman and protect his/her employment. Further, II Party cannot take the super technical submission of delay and latches as a protective shield to cover up their lapses and violation of laws. Further, it is the well settled law that, I Party can initiate proceedings for the alleged illegal termination of services of workman en-mass by the II Party. Further, for the effective implementation of the Labour enactment and protecting the interest of workman only the Government have created a Labour Department. Further, it is very pertinent to point out that, the present reference is made by the Government of India, Ministry of Labour with the above mentioned schedule. Hence, this Court is bound to pass appropriate award in accordance with law based upon the facts and circumstances of the present matter. The II Party/Management cannot take super technical and hyper technical measures, so as to avoid payment of the legitimate amounts, payable to the I Party/Workman. Further, it is clearly held in the judgment reported in 1995-II-LLJ 835, between H.S. Vasantsenaiah Vs The Divisional Controller, K.S.R.T.C & Anothers, as follows:- "Delay in approaching the Labour Court- No ground to deny back wages and other consequential benefits."

9. Further, it is held in the judgment reported in 1999-LLJ-II-pg 482-483 [SC], between Mahavir Singh Vs U.P. State Electricity Board and others, as follows:- "Delay in raising dispute – Labour Court finding termination of workman's service illegal-reference could not be rejected." Also in the judgment reported in 2003-LLJ-I-pg 412-414 [MP], between Ramadhar Tiwari Vs Union of India and others, it is clearly held as follows:- "No limitation laid down for raising dispute under statute - dispute raised after about 5 years - not one which could be refused on ground of

delay." Again, in the judgment reported in 1994-LLJ-I-pg 468-471 [All], between U.P. State Spinning Mills Co. Vs State of U.P and others, it is specifically held as follows:- "Lapse of 11 years between raising a dispute and making reference does not lose the character of industrial dispute." Further, in the judgment reported in 2002-LLJ-I-pg 1079-1081 [Del], between Mangal Singh Vs Presiding Officer, Industrial Tribunal No.1, Delhi and another, it is clearly held as follows:- "Relief under Industrial Dispute Act, 1947 not to be denied to workman merely on ground of delay." Also, in the judgment reported in 2002-LLJ-I-pg 1129-1132 [Bom], between Haribhau S/o. Gaman Waghchaure Vs State of Maharashtra and another, it is clearly held as follows:- "Limitation Act does not apply to proceedings under Industrial Dispute Act, 1947- If plea of delay be raised, employer to show real prejudice caused by delay and not rely on it as mere hypothetical defense." In the present case also, considering the above mentioned socio-economic conditions, poverty and illiteracy, of the I Party, it is found that, the appropriate relief, in accordance with law has to be granted to the workman and the same cannot be denied, as per the mere hypothetical defence taken by the II Party regarding the delay and in fact, the II Party has not established the real prejudice caused by the said delay.

10. Further, in the judgment in the case of Basti Sugar Mills Co. Ltd. Vs State of U.P., (1979) 2 SCC 88, by V. Kishna Iyer. J, it is pointed out as follows:- "Industrial Jurisprudence does not brook nice nuances and torturesome technicalities to stand in the way of just solutions reached in a rough and ready manner. Grim and grimy life-situations have no time for the finer manners of elegant jurisprudence." Thus, the process of industrial adjudication is an onerous task being guided by the constitutional mandates and aiming at settlement of the industrial dispute on a fair and just basis, tested on the touchstone of social and economic justice. When an industrial dispute is raised, it is a commotion to be pacified by dispensing justice. In such adjudication, not just the right to equality and other Constitutional guarantees, but the aims and ideals of the Constitution enter into the consideration. It is the duty of the Courts to apply directive principles in interpreting the Constitution and the laws. Also, it is reported in Lloyds Bank Ltd Vs. Bundy, (1974) 3 All ER 757 that Lord Denning first clearly enunciated his theory of "inequality of bargaining power". His Lordship began his discussion on this part of the case by stating (at page 763): "There are cases in our books in which the courts will set aside a contract, or a transfer of property, when the parties have not met on equal terms, when the one is so strong in bargaining power and the other so weak that, as a matter of common fairness, it is not right that the strong should be allowed to push the weak to the wall." In the present case also, it is seen that, the II Party has clearly admitted in the counter statement that, the success of the co-workers of I Party in W.P. No. 5615/2001 dated 29.03.2001, W.A. No. 3460/01 c/w W.A. No. 3459/01 dated 12.06.2002 and W.P. No. 26101/01 c/w W.P. Nos. 23798/01, 23797/01 & 23794/01 dated 01.06.2006, has inspired the I Party to file the present reference and in fact, the I Party has specifically pointed out in the claim statement and evidence that, the I Party is an illiterate person and the I Party is facing poverty, economic and social weakness and the I Party has repeatedly requested the II Party officials to provide employment to the I Party and Assistant Manager of II Party MW-1 has also admitted in his evidence that, I Party is an illiterate person and also the II Party has not established the real prejudice caused to the II Party, by the said delay.

11. Further, the Hon'ble High Court of Karnataka, in W.P. No. 9974/2006 (L-TER) dated 07.01.2015, (Before Mr. Hon'ble Chief Justice D.H. Waghela and Mr. Hon'ble Justice Budihal. R. B), in the case of The Management of National Aerospace Laboratories Vs Engineering & General Workers Union and the Managing Directors, it is particularly held as follows:- "The jurisdiction of an Industrial Tribunal, therefore, is expansive and creative and not restricted to only enforcing or interpreting the contract of service or the extant legal provisions and it is not-fettered by the limitations of contracts and can even involve extension of existing agreement of the making of a new one, or in general, creation of new obligations or modification of old ones." In the present case also, for the above mentioned facts and circumstances it is found that, I Party is entitled to get appropriate relief, in accordance with law, and the II Party is not justified in raising the objection on the ground of delay and latches, as per the said jurisdiction of the present Court. Thus, the point is answered in favour of the I Party.

12. Analysis, Discussion and Findings with regard to the above mentioned point/issue No. 2:-

The MW-1 the Assistant Manger of II Party, who has given evidence on behalf of II Party has admitted that, it is true to suggest that, there is no health unit and the working conditions as per the mining act have not been provided at the Mines. The said admission is also clinchingly established the various above mentioned allegation made as against the II Party. Further, MW-1 has admitted that, it is true to suggest that, as per the provisions of the mining act there should be a qualified doctor to attend the I Party workers at the mining site. If it is so, then there is no need for the II Party to get the doctor from Hatti Gold Mines and to subject the I Party to medical examination. On that ground only, I Party has clearly stated in the claim statement that, as per the illegal medical certificate, the social and economic weaker section, person of the I Party has been refused to continue the work by the II Party.

13. Further, MW-1 namely, the Assistant Manager of II Party/Management has admitted that the II Party company has suffered loss of 21 crores due to mis-management and it is also true to suggest that, due to the said mis-management, the financial crisis has occurred and it is true to suggest, having suffered the said loss the management thought of reducing the number of workers and it is true to suggest that, the Management ordered for medical

examination of all the mining workers. For the said reasons only, I Party has categorically stated in the claim statement that, II Party has suffered huge loss due to mis-management and in the way of reducing the number of workers they have conducted illegal medical examination and terminated several workers including I Party. Further, MW-1 admitted that, to examine the workers doctors, have come from Hatti Gold Mines Ltd. However, he has admitted, that he does not know the names and qualifications of those doctors.

14. Further, in the counter statement the II Party has stated that, the I Party has been given opportunity to prefer an appeal before Appellate Medical Board within 30 days, if the I Party is aggrieved by the Medical Report. However, the MW-1 has categorically admitted that, it is true to suggest that, they have not produced the Medical certificate issued by the Doctor who has examined the I Party health condition and it is also true to suggest that, the Medical From 'O' is in English language. At the same time, the MW-1 has admitted that, I Party workers are illiterate workers. Hence, it is found that the said medical certificate has not been issued in the language known to the workers/I Party and also not understood by the I Party and in fact, the said medical certificate is also not submitted to this Court by the II Party. In such circumstances, it is too much on the part of II Party to content that I Party has got the appeal remedy as per the medical certificate and the workers have not availed the appeal remedy and hence they cannot file the present case before this Court. Further, MW-1 has admitted in his evidence that, the Doctors have not conducted the medical examination in his presence and he does not know in what respect the I Party has been found unfit to continue in service and he has to verify in the office whether copy of notice issued to I Party after medical examination or acknowledgement regarding service of notice on the I Party is available or not. So, the MW-1 has not produced the relevant records to establish that, after medical examination, proper record has been issued to I Party to appeal before 30 days. On the other hand, MW-1 has categorically admitted that, II Party has not produced the Medical certificate issued by the Doctor who has examined the I Party. Above all, MW-1 has admitted that, it is true to suggest that, I Party has not been issued with charge sheet and no enquiry has been conducted before the termination of his service. The said categorical admission of MW-1 shows that, II Party has not terminated the I Party as per the principles of natural justice.

15. Further, MW-1 has admitted that, it is true to suggest that as per the clause 18 and 24 any termination has to be followed by enquiry along with 3 months notice pay. However, MW-1has admitted that, I Party has not been issued with charge sheet and also, enquiry has been conducted. Hence, it is crystal clear that, II Party has not terminated the I Party in accordance with law. Further, MW-1 has admitted that, termination order has not been attached with copy of Medical Certificate pertaining to I Party. Furthermore, MW-1 has admitted that, he does not know in what respect the Medical Officer opined that, the I Party is being medically unfit. Further, MW-1 has admitted that, it is true that, II Party has not taken any permission from Labour Ministry or Labour Secretary under the provisions of I.D. Act for terminating services of several employees on the basis of medical grounds. Further, MW-1 has specifically admitted in his evidence that, it is true to suggest that I Party is the illiterate person and it is true to suggest that company has not furnished to the I Party the Kannada Version/translation of Medical Certificate which is in English and the company has enhanced the age of employees to 60 years w.e.f 17.07.2008. In the light of the above mentioned facts and circumstances it is found that, the II Party is not justified in submitting that, the I Party has to prefer only the appeal as against the medical certificate issued by the medical officer. Thus, the point/issue is answered as against the II Party.

16. Analysis, Discussion and Findings with regard to the above mentioned point/issue No. 3:- The I Party has stated in the claim statement that, he is entitled to work till attending the age of superannuation and the I Party's actual date of birth is registered in EPF, B-register and Service records, etc and suddenly, the II Party has refused to provide employment to the I Party, as per the so-called illegal medical examination and the co-workers have challenged the pre-matured retirements and age certification before the Hon'ble High Court of Karnataka, viz.,

(i) Writ Petition No. 5615/2001 between Smt. K.Dundamma Vs MML, and the same Management of II Party challenged the same in Writ Appeal No. 3460/2001 C/W W.No. 3459/2001. The said Appeal has been rejected on 12.06.2002 confirming the single Judge order dated 29.03.2001. In view of the said decision the Management reinstated the above mentioned pre-matured retired employee with payment of back wages, with continuity of service thereon.

(ii) Writ Petition No. 26101/2001,C/W W.P. Nos. 23798/2001, 23797/2001 & 23794/2001 filed by Sri V.C. Range Gowda and 8 others Vs MML, and the same has been allowed on 01.06.2006. The MW-1, the Assistant Manger of II Party has also admitted the said details, in his evidence. Further, the I Party has specifically pointed out that, on account of administrative problems faced by the II Party, the II Party adopted its own tactics, ways and means for terminating the Mining Workers in short cut methods and also, in an illegal and irregular manner by adopting anti-labour and un-fair labour practice and victimized the I Party and other co-workers by removing them enmasse by resorting to so-called Medical Examination during the year 1998 in illegal and irregular manner, without disclosing the true fact, to the I Party and also without notifying the so-called Medical Report i.e., not by a Doctor of a Rank of Assistant Civil Surgeon as defined in Rule 29-C of the Mines Rules 1995 and hence, the so-called Medical Examination conducted by the II Party is illegal and irregular, and the same is not having any legal sanctity and not

sustainable in law as it is violative of Rule 29-C. The MW-1, Assistant Manger of II Party has candidly admitted in his evidence that, due to mis-management, the II Party has suffered administrative problems, and hence, the II Party has decided to terminate the services of the I Party workers.

17. Further, it is specifically pointed out by the I Party that, II Party has no right to refuse the employment to the I Party without following the due process of Law and the II Party used the illegal, imaginary, hypothetical and unscientific Medical report as its tool for unilaterally deciding the age of I Party and other workers even though the correct age is mentioned in the EPF, B-register and Service records, and I Party is hale and healthy and entitled to work up to the age of superannuation. In the evidence also, I Party has stated the said details mentioned in the claim statement. Further, in the cross examination, I Party has clearly pointed out that, it is not true to suggest that, as per the request made by the union the II Party subjected the I Party to medical check up and found the I Party unfit to continue in service. In the additional evidence also, the I Party has pointed out that, it is not true to suggest that as on termination, all amounts due to I Party have been received and the I Party has filed the present case, without any justification. Further, the II Party has also not produced any relevant records, to establish that, the II Party has paid all the amounts due to I Party as on the date of termination. Further, it is observed in the judgment reported in 1984-I-LLJ 388(SC) as follows:- "Acceptance of retirement benefits – Acceptance of retirement benefits by the workmen concerned – Whether precluded from raising Industrial Disputes Challenging Orders of retirement. On the materials placed by the management, held, neither a case of acquiescence nor a case of waiver on the part of workmen was made out – Held, the workmen were entitled to wages for the period between the dates of retirement and the dates of their reaching the age of 58 years." Also, in the judgment reported in 1997-II-LLJ 228(SC) it is held as follows:- "There is no statutory estoppels in favour of the Officer." Further, it is the settled law that, there is no estoppel as against the statutory rights/benefits, which the I Party/workman is entitled to get under the provisions of the Industrial Disputes Act, 1947 and the II Party has also not established that, the action has been taken by the II Party as against the I Party, as per the principles of natural justice and also, as per the procedure and practice to be followed in accordance with law. In the light of the above mentioned reasons, facts and circumstances it is found that, the II Party is not justified in submitting that, after the receipt of the terminal benefits the I Party cannot raise any dispute in the present case and thus, the point/issue is answered as against the II Party.

18. Analysis, Discussion and Findings with regard to the above mentioned point/issue No. 4:-

The I Party has categorically stated that, due to mis-management the II Party has suffered a loss and hence, the II Party has found its own tactics, ways and means for terminating the mines workers in short cut methods and also in an illegal and irregular manner by adopting anti-labour and un-fair labour practice and victimized the I Party and other co-workers by removing them enmasse by resorting to so-called Medical Examination during the year 1998 in illegal and irregular manner. Further, MW-1 has admitted in his evidence that the II Party has entrusted the work to private party in spite of availability of technical persons and machinery in the year 1995-1996 and hence, the II Party company has suffered a loss of about Rs. 21 crores and it is also true to suggest that, due to said mis-management the financial crisis occurred and also it is true to suggest that, having suffered the said loss the management thought of reducing the number of workers. Hence, it is clear that, the MW-1 of II Party has also admitted the said submissions made by the I Party in the claim statement. Further, MW-1 has admitted that, he cannot right now give the date, month and year of notice served to I Party and it is true to suggest that, I Party has not been issued with charged sheet and no enquiry has been conducted before the termination of the I Party. Further, MW-1, admitted that, it is true to suggest that as per the clause 18 and 24 any termination has to be followed by enquiry along with 3 months notice pay. However, MW-1 has clearly admitted that 3 months notice pay has not been paid to the I Party by the II Party.

19. Further, MW-1 has admitted in his evidence that, it is true to suggest that, there is Statutory Report, B Register and Provident Fund Register. Further, I Party has categorically stated that, the date of birth has been entered in the Statutory Report, B Register and Provident Fund Register and the II Party without any valid reasons pre-maturedly terminated the service of the I Party. Further, the date of birth of I Party mentioned in the claim statement is the same as mentioned in the employees register and pension payment order, which are marked as Ex M1/W1, except in the case of CR No. 80/2007, CR No. 105/2007 and in CR No. 05/2008. Further, in the case of CR No. 80/2007, it is seen that, as per Individual Workers History Sheet, the Age of I Party is 36 years, as on 07.04.1979 and in CR No. 105/2007, it is seen that, as per Employees Register, the Date of Birth of I Party is mentioned as 15.01.1941 and also in CR No. 05/2008, it is seen that, as per Employees Register, the Date of Birth of I Party is mentioned as 17.12.1948. Also, the Circular relating to, enhancing the superannuation age from 58 years to 60 years to the workers of II Party, is applicable only to persons who are in employment as on 17.07.2008. Further, MW-1 has clearly admitted that, it is true to suggest that, as per Clause 18.3 of CDPR rules, the changes in the date of birth, as entered in the company record, can only effected on a judgment of a competent Court and except on a judgment of a Court, the date of birth once recorded, will not be changed at the request of the Officer/Employee under any circumstances. For that reason only, I Party has clearly stated that, the II Party has terminated the service of I Party pre-maturedly without any valid reasons. Further, the act of the II Party, certainly, is not proper and legal and also, no valid reasons have been furnished by the II Party

for not producing the medical certificate issued to the I Party by the II Party and no valid reason has been furnished by the II Party, as to what prevented the II Party in not following the principles of natural justice and also for not producing the material records, though they are very important records, to prove the aforesaid details mentioned in the counter statement filed on behalf of II Party. Further, on the careful perusal of material records mentioned in the Exhibits list, it is seen that, II Party has refused to provide work to the I Party without following the due process of law.

20. Further, it is found that, there is discrimination and also violation of fundamental right caused to the I Party and it is not proper and also, not legal to give forceful retirement to I Party, by the II Party, without following the due process of law. Further, it is seen that, the II Party has not terminated the service of the I Party as per the Principles of Preponderance of Probability. Further, no injustice can be caused by the II Party to the I Party and I Party cannot be victimized due to the actions of the II Party without any valid reasons. Further, it is relevant to mention that, the I Party/workman has been punished by II Party without adopting the procedure known under law. Further, the underlying aim and object of adjudication of an Industrial Dispute is, in effect, dispensation of social and economic justice and translating fundamental rights as well as directive principles into some tangible relief. The ultimate object is to see that industrial disputes are settled by industrial adjudication on principles of fair play and justice.

21. Further, the awarding of reinstatement does not amount to automatic conferment of back wages as held in 2009 (4) LLJ 667 (SC) Malla C.N. Vs State of Jammu and Kashmir & others. Further, it is held by the Hon'ble Supreme Court, in the case of APSRTC Vs B.S. David Pal, reported in 2006 (2) SCC 282, that the entitlement of back wages is not automatic on reinstatement. Awarding of back wages, depend upon other factors and circumstances. The I Party has pointed out in the claim statement that the I Party has been thrown out of employment and is facing hardship. In the affidavit also, the I Party has stated that with no financial income the I Party is facing great hardship. However, the claim of the workman that, the I Party is entitled for the full back wages, cannot be considered, having regard to fact that the I Party has not performed any work for II Party from 1998 to the date of superannuation, for the several years, and also, in order to balance the interest of both the parties, by adopting the balancing test or balancing process in the proper manner, this Court is of the considered opinion that in the facts and situation of the present case, 50% back wages and other consequential benefits only can be granted to the I Party. In the claim statement, the I Party has claimed interest, however the I Party has not enlightened the fact that the I Party is entitled to get interest also as prayed for in the claim statement by adducing relevant evidence and appropriate records. Hence, it is found that, the I Party is not entitled to get interest amount for the above mentioned factual reasons and also legal grounds.

22. Further, in the judgment reported in 2010-I-LLJ-861(SC), in C.A. No. 2874/2009, dated 28.04.2009, (Before Mr. Justice Tarun Chatterjee and Mr. Justice H.L. Dattu), in the case of Malwa Vanaspati & Chemical Co. Ltd. Vs Rajendra, it is held as follows:- "Back Wages – Entitlement for full back wages – Depends upon facts and circumstances of each case – Employee reinstated in service – Question of termination or reinstatement not in dispute – Employee only entitled to 50% back wages." Also, in the judgment reported in AIR 2009 Supreme Court 240, in C.A. No. 5425/2008, dated 02.09.2008, (Before Mr. Justice Tarun Chatterjee and Mr. Justice Aftab Alam), in the case of M.P. Electricity Board & Ors Vs Maiku Prasad, it is held as follows:- "Industrial Dispute Act (14/1947), Sch. 2, Item 6 – Back wages – Curtailment – Respondents' service terminated for unauthorised absence – Termination set aside by Labour Court – Direction for reinstatement and payment of full back wages passed – Considering long period between termination and reinstatement for which respondent has not worked – Back wages reduced to 50%." Further, in the judgment reported in 2010-I-LLJ-861(SC), in C.A. No. 2874/2009, dated 28.04.2009, (Before Mr. Justice Tarun Chatterjee and Mr. Justice H.L. Dattu), in the case of Malwa Vanaspati & Chemical Co. Ltd. Vs Rajendra, it is held as follows:- "Back Wages – Not to be granted mechanically, upon termination of service being held illegal- Service of workman terminated in 1987 – Labour Court gave its award in 2002 holding termination illegal – In circumstances of case, 50% back wages held proper and payment thereof accordingly directed." In the present case also, it is found that, the I Party is entitled to get 50% of the amount, out of the total amount of the monetary benefits with continuity of service, and other consequential benefits that I Party would have received in the absence of the impugned punishment of refusal to provide employment, by the II Party.

23. Further, in the judgment reported in 2009-I-LLJ 1 [SC], between Senior Regional Manager, TASMAC Ltd., and another Vs The M. Raviselvam, it is held as follows:- "Back wages-payment of back wages questioned- On reinstatement, full back wages is not to be paid automatically. It depends upon facts of each case. In the present case order for payment of back wages modified to the extent of 50% to be paid by the Management." And in the judgment reported in 1999-LLJ-I-pg 1260-1265 [SC], between Ajaib Singh Vs Sirhind Co-operative Marketing-Cum-Processing Service Society, it is clearly held as follows:- "Delay in seeking relief by workman against Termination of Service-Article 137 of Schedule to Limitation Act not applicable to proceedings under I.D. Act – Workman entitled to 60% of back wages." Further, in the judgment reported in 1990 [61] FLR 768, between Delhi Transport Corporation Vs D.T.C. Mazdoor Congress and others, it is held as follows:- "A confirmed and permanent employee-Terminated without one month's notice or pay in lieu of and without holding enquiry and affording any opportunity-Termination was illegal-Principles of natural justice violated." In the present case also, the II Party has terminated the I Party

without following the Principles of natural justice and without holding enquiry and also without offering opportunity to the I Party to put forth his/her defence. Further, in the judgment reported in 2010-I-LLJ 682 [Bom], between Santhosh Kumar, S/o Babulal Gupta Vs Sub-Area Manager, Western Coal Fields Ltd., Maharastra and another, it is held as follows:- "Dismissal of workman from service – no enquiry held – termination order not served on workman – punishment held disproportionate – deprivation of 50% back wages with warning issued to workman held would be proper." Further, the II Party has stated in the counter statement that, the I Party, on medical examination, has been found to be unfit to work. However, in the same counter statement II Party has stated that, I Party is happily working elsewhere since the date of termination and the I Party is working elsewhere also earning salary. In such circumstances, it is seen that, the submissions made by the II Party in the counter statement are self contradictory. On that ground also II Party is not justified in terminating the services of I Party without following the principles of natural justice, fairness and reasonableness. Further, on the totality of the above mentioned facts and circumstances, and also, after taking into consideration the evidences and exhibits mentioned herein below, in the proper perspective, the following award is passed, in the best interest of justice, equity and fair play.

(i) In C R No. 45/2007 Smt B. Rangamma Vs MML

A W A R D

The II Party/Management is not justified in imposing the punishment of termination of I party/Rangamma with effect from 22.05.1998 and II Party is directed to pay to the I Party 50% of the amount, out of the total amount of back wages and other consequential benefits, salary and allowances and all benefits due and payable to the I Party from the date of termination, namely, 22.05.1998 till the I Party attains the age of retirement i.e, 01.12.2015 to which the I Party would have been entitled in the absence of the impugned termination of service passed by II Party. In computing such benefits the I Party shall be deemed have been in continuous service of II Party, till the date the I Party attains the age of retirement and the present reference is answered, accordingly, without cost for the above mentioned peculiar facts and circumstances.

(ii) In C R No. 80/2007 Sh. J. Thiramalegowda Vs MML

A W A R D

The II Party/Management is not justified in imposing the punishment of termination of I party/J. Thiramalegowda with effect from 16.04.1998 and II Party is directed to pay to the I Party 50% of the amount, out of the total amount of back wages and other consequential benefits, salary and allowances and all benefits due and payable to the I Party from the date of termination, namely, 16.04.1998 till the I Party attains the age of retirement i.e, 07.04.2001 to which the I Party would have been entitled in the absence of the impugned termination of service passed by II Party. In computing such benefits the I Party shall be deemed have been in continuous service of II Party, till the date the I Party attains the age of retirement and the present reference is answered, accordingly, without cost for the above mentioned peculiar facts and circumstances.

(iii) In C R No. 105/2007 Smt. Thimmamma Vs MML

A W A R D

The II Party/Management is not justified in imposing the punishment of termination of I party/Thimmamma with effect from 29.06.1998 and II Party is directed to pay to the I Party 50% of the amount, out of the total amount of back wages and other consequential benefits, salary and allowances and all benefits due and payable to the I Party from the date of termination, namely, 29.06.1998 till the I Party attains the age of retirement i.e, 15.01.1999 to which the I Party would have been entitled in the absence of the impugned termination of service passed by II Party. In computing such benefits the I Party shall be deemed have been in continuous service of II Party, till the date the I Party attains the age of retirement and the present reference is answered, accordingly, without cost for the above mentioned peculiar facts and circumstances.

(iv) In C R No. 118/2007 Sh. C.Rangappa Vs MML

A W A R D

The II Party/Management is not justified in imposing the punishment of termination of I party/ C.Rangappa with effect from 09.09.1998 and II Party is directed to pay to the I Party 50% of the amount, out of the total amount of back wages and other consequential benefits, salary and allowances and all benefits due and payable to the I Party from the date of termination, namely, 09.09.1998 till the I Party attains the age of retirement i.e, 19.12.2010 to which the I Party would have been entitled in the absence of the impugned termination of service passed by II Party. In computing such benefits the I Party shall be deemed have been in continuous service of II Party, till the date the I Party attains the age of retirement and the present reference is answered, accordingly, without cost for the above mentioned peculiar facts and circumstances.

(v) In C R No. 05/2008 Sh. V. Rangegowda Vs MML

A W A R D

The II Party/Management is not justified in imposing the punishment of termination of I party/ V. Rangegowda with effect from 30.05.1998 and II Party is directed to pay to the I Party 50% of the amount, out of the total amount of back wages and other consequential benefits, salary and allowances and all benefits due and payable to the I Party from the date of removal, namely, 30.05.1998 till the I Party attains the age of retirement i.e, 17.12.2006 to which the I Party would have been entitled in the absence of the impugned removal of service passed by II Party. In computing such benefits the I Party shall be deemed have been in continuous service of II Party, till the date the I Party attains the age of retirement and the present reference is answered, accordingly, without cost for the above mentioned peculiar facts and circumstances.

(vi) In C R No. 09/2008 Smt. Shankaramma Vs MML

A W A R D

The II Party/Management is not justified in imposing the punishment of removal of I party/Shankaramma with effect from 30.06.1998 and II Party is directed to pay to the I Party 50% of the amount, out of the total amount of back wages and other consequential benefits, salary and allowances and all benefits due and payable to the I Party from the date of removal, namely, 30.06.1998 till the I Party attains the age of retirement i.e, 17.01.2007 to which the I Party would have been entitled in the absence of the impugned removal of service passed by II Party. In computing such benefits the I Party shall be deemed have been in continuous service of II Party, till the date the I Party attains the age of retirement and the present reference is answered, accordingly, without cost for the above mentioned peculiar facts and circumstances.

(vii) In C R No. 29/2008 Smt. B. Lakshmamma Vs MML

A W A R D

The II Party/Management is not justified in imposing the punishment of removal of I party/B. Lakshmamma with effect from 29.05.1998 and II Party is directed to pay to the I Party 50% of the amount, out of the total amount of back wages and other consequential benefits, salary and allowances and all benefits due and payable to the I Party from the date of removal, namely, 29.05.1998 till the I Party attains the age of retirement i.e, 16.06.2008 to which the I Party would have been entitled in the absence of the impugned removal of service passed by II Party. In computing such benefits the I Party shall be deemed have been in continuous service of II Party, till the date the I Party attains the age of retirement and the present reference is answered, accordingly, without cost for the above mentioned peculiar facts and circumstances.

(viii) In C R No. 36/2008 Smt. M. Subbamma Vs MML

A W A R D

The II Party/Management is not justified in imposing the punishment of removal of I party/M. Subbamma with effect from 26.05.1998 and II Party is directed to pay to the I Party 50% of the amount, out of the total amount of back wages and other consequential benefits, salary and allowances and all benefits due and payable to the I Party from the date of removal, namely, 26.05.1998 till the I Party attains the age of retirement i.e, 01.09.2003 to which the I Party would have been entitled in the absence of the impugned removal of service passed by II Party. In computing such benefits the I Party shall be deemed have been in continuous service of II Party, till the date the I Party attains the age of retirement and the present reference is answered, accordingly, without cost for the above mentioned peculiar facts and circumstances.

(ix) In C R No. 41/2008 Smt. Dodda Honuramma Vs MML

A W A R D

The II Party/Management is not justified in imposing the punishment of removal of I party/Dodda Honuramma with effect from 30.06.1998 and II Party is directed to pay to the I Party 50% of the amount, out of the total amount of back wages and other consequential benefits, salary and allowances and all benefits due and payable to the I Party from the date of removal, namely, 30.06.1998 till the I Party attains the age of retirement i.e, 01.08.2004 to which the I Party would have been entitled in the absence of the impugned removal of service passed by II Party. In computing such benefits the I Party shall be deemed have been in continuous service of II Party, till the date the I Party attains the age of retirement and the present reference is answered, accordingly, without cost for the above mentioned peculiar facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 06th November, 2017)

V. S. RAVI, Presiding Officer

(i) In C R No. 45/2007 Smt B. Rangamma Vs MML

List of Witness on the side of I Party:

WW 1	Sh. B. Rangamma , I Party/ workman and also, additional evidence

List of Witness on the side of II Party:

MW 1	Sh. Somanna, Assistant Manager, II Party/ Management

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	-	Scheme Certificate issued by Employees Provident Fund Organisation
Ex W-2	29.03.2001	Order passed in W.P. No. 5615/2001
Ex W-3	12.06.2002	Order passed in W.A. No. 3460/2001 c/w 3459/2001
Ex W-4	01.06.2006	Order passed in W.P. No. 26101/2001 c/w 23798/2001, 23797/2001 & 23794/2001
Ex W-5	22.08.2008	Circular relating to enhancing the superannuation age from 58 years to 60 years

Exhibit marked on behalf of II Party:

Exhibits	Date	Description of Document
Ex M-1	-	Register of Employees

(ii) In C R No. 80/2007 Sh. J. Thiramalegowda Vs MML

List of Witness on the side of I Party:

WW 1	Sh. J. Thiramalegowda, I Party/ workman and also, additional evidence

List of Witness on the side of II Party:

MW 1	Sh. Somanna, Assistant Manager, II Party/ Management

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	-	Medical Examination Report Form 'O'
Ex W-2	22.05.1998	Termination Order issued to I Party
Ex W-3	29.03.2001	Order passed in W.P. No. 5615/2001
Ex W-4	12.06.2002	Order passed in W.A. No. 3460/2001 c/w 3459/2001
Ex W-5	01.06.2006	Order passed in W.P. No. 26101/2001 c/w 23798/2001, 23797/2001 & 23794/2001

Exhibit marked on behalf of II Party:

Exhibits	Date	Description of Document
Ex M-1	-	Individual Workers History Sheet

(iii) <u>In C R No. 105/2007 Smt. Thimmamma Vs MML</u>

List of Witness on the side of I Party:

WW 1	Smt. Thimmamma, I Party/ workman and also, additional evidence

List of Witness on the side of II Party:

MW 1	Sh. Somanna, Assistant Manager, II Party/ Management

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	29.06.1998	Termination Order issued to I Party
Ex W-2	29.03.2001	Order passed in W.P. No. 5615/2001
Ex W-3	12.06.2002	Order passed in W.A. No. 3460/2001 c/w 3459/2001
Ex W-4	01.06.2006	Order passed in W.P. No. 26101/2001 c/w 23798/2001, 23797/2001 & 23794/2001

Exhibit marked on behalf of II Party:

Exhibits	Date	Description of Document
Ex M-1	-	Register of Employees

(iv) In C R No. 118/2007 Sh. C.Rangappa Vs MML

List of Witness on the side of I Party:

WW 1	Sh. C.Rangappa, I Party/ workman and also, additional evidence

List of Witness on the side of II Party:

MW 1	Sh. Somanna, Assistant Manager, II Party/ Management

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	29.03.2001	Order passed in W.P. No. 5615/2001
Ex W-2	12.06.2002	Order passed in W.A. No. 3460/2001 c/w 3459/2001
Ex W-3	01.06.2006	Order passed in W.P. No. 26101/2001 c/w 23798/2001, 23797/2001 & 23794/2001

Exhibit marked on behalf of II Party:

Exhibits	Date	Description of Document
Ex M-1	-	Register of Employees

(v) In C R No. 05/2008 Sh. V. Rangegowda Vs MML

List of Witness on the side of I Party:

WW 1	Sh. V. Rangegowda, I Party/ workman and also, additional evidence

List of Witness on the side of II Party:

MW 1	Sh. Somanna, Assistant Manager, II Party/ Management

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	-	Membership Application Form
Ex W-2	06.06.1998	Termination order issued to I Party
Ex W-3	29.03.2001	Order passed in W.P. No. 5615/2001
Ex W-4	12.06.2002	Order passed in W.A. No. 3460/2001 c/w 3459/2001
Ex W-5	01.06.2006	Order passed in W.P. No. 26101/2001 c/w 23798/2001, 23797/2001 & 23794/2001

Exhibit marked on behalf of II Party:

Exhibits	Date	Description of Document
Ex M-1	-	Register of Employees

(vi) <u>In C R No. 09/2008 Smt. Shankaramma Vs MML</u>

List of Witness on the side of I Party:

WW 1	Smt. Shankaramma, I Party/ workman and also, additional evidence

List of Witness on the side of II Party:

MW 1	Sh. Somanna, Assistant Manager, II Party/ Management

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	-	Register of Employees
Ex W-2	30.07.1998	Termination order issued to I Party
Ex W-3	29.03.2001	Order passed in W.P. No. 5615/2001
Ex W-4	12.06.2002	Order passed in W.A. No. 3460/2001 c/w 3459/2001
Ex W-5	01.06.2006	Order passed in W.P. No. 26101/2001 c/w 23798/2001, 23797/2001 & 23794/2001

(vii) <u>In C R No. 29/2008 Smt. B. Lakshmamma Vs MML</u>

List of Witness on the side of I Party:

WW 1	Smt. B. Lakshmamma, I Party/ workman and also, additional evidence

List of Witness on the side of II Party:

MW 1	Sh. Somanna, Assistant Manager, II Party/ Management

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	06.06.1998	Termination order issued to I Party
Ex W-2	29.03.2001	Order passed in W.P. No. 5615/2001
Ex W-3	12.06.2002	Order passed in W.A. No. 3460/2001 c/w 3459/2001

Ex W-4	01.06.2006	Order passed in W.P. No. 26101/2001 c/w 23798/2001, 23797/2001 & 23794/2001
Ex W-5	22.08.2008	Circular relating to enhancing the superannuation age from 58 years to 60 years

(viii) In C R No. 36/2008 Smt. M. Subbamma Vs MML

List of Witness on the side of I Party:

WW 1	Smt. M. Subbamma, I Party/ workman and also, additional evidence

List of Witness on the side of II Party:

MW 1	Sh. Somanna, Assistant Manager, II Party/ Management

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	-	Membership Application Form
Ex W-2	06.06.1998	Termination order issued to I Party
Ex W-3	29.03.2001	Order passed in W.P. No. 5615/2001
Ex W-4	12.06.2002	Order passed in W.A. No. 3460/2001 c/w 3459/2001
Ex W-5	01.06.2006	Order passed in W.P. No. 26101/2001 c/w 23798/2001, 23797/2001 & 23794/2001
Ex W-6	22.08.2008	Circular relating to enhancing the superannuation age from 58 years to 60 years

Exhibit marked on behalf of II Party:

Exhibits	Date	Description of Document
Ex M-1	-	Register of Employees

(ix) In C R No. 41/2008 Smt. Dodda Honuramma Vs MML

List of Witness on the side of I Party:

WW 1	Smt. Dodda Honuramma, I Party/ workman and also, additional evidence

List of Witness on the side of II Party:

MW 1	Sh. Somanna, Assistant Manager, II Party/ Management

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	-	Pension Payment Order
Ex W-2	30.07.1998	Termination order issued to I Party
Ex W-3	29.03.2001	Order passed in W.P. No. 5615/2001
Ex W-4	12.06.2002	Order passed in W.A. No. 3460/2001 c/w 3459/2001
Ex W-5	01.06.2006	Order passed in W.P. No. 26101/2001 c/w 23798/2001, 23797/2001 & 23794/2001

नई दिल्ली, 20 दिसम्बर, 2017

का.आ. 2895.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैसर्स प्रसाद स्टोन वर्क्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 117/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.12.2017 को प्राप्त हुआ था।

[सं. एल-29012/51/2004-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th December, 2017

S.O. 2895.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 117/2004) of the Central Government Industrial Tribunal/Labour Court-2, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Parsad Stone Works and their workman, which was received by the Central Government on 07.12.2017.

[No. L-29012/51/2004-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri R.K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act,1947

REFERENCE NO. 117 OF 2004

PARTIES : Sri Subhash Mondal,
C/o Shri Jagat Narayan Mondal
Vill & PO: Korka Ghat,
Jharkhand, Godda.

Vs.

Prop. Shri Vijay Kumar Sinha
Prasad Stone Works
PO: Pathana, Sahibganj

Order No. **L-29012/51/2004-IR (M) dt. 08.11.2004.**

APPEARANCES :

On behalf of the workman/Union : Mr. S.N.Ghosh, Ld. Advocate

On behalf of the Management : None

State : Jharkhand Industry : Mines

Dated, Dhanbad, 13 Oct., 2017

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No**. L-29012/51/2004-IR (M) dt. 08.11.2004.**

SCHEDULE

"Whether the action of the Management of M/s. Prasad Stone Works, Pathana Sahibganj in terminating the services of Shri Subhas Mondal, workman without complying Section 25-F of I.D. Act is legal and or justified? If not, to what relief the above workman is entitled?"

2. None from either side is reported to be present on date despite having sent a fresh Regd. notice dt 12.09.2017 at the address of the workman who availed adjournments more than five times since its rolling out on the status of evidence of the workman. Undeniably earlier a series of notices dtt.09.02.2005, 18.02.2005, 18.04.2005, 11.09.2007, 11.12.2007, 04.02.2008 and 19.03.2008 apart from and on Show-Cause Notice dt. 22.08.2005 was sent at the address of the workman referred in Order of the Reference itself. Similar was the side of the Management also by its nil representation this time too. However, Management Representation had been nil since its inception and rolling out as the Reference case. The case was fixed on ex-parte evidence of the workman. The case is all about termination of service of the workman allegedly by not applying 25 F of I.D. Act, the issue is to be justified through trails.

On meticulous study of the case record, it stands cleared beyond doubt that after having received fresh Regd. Notice and so many adjournments, the workman desperately proved failure to produce witness, the status the case has been rolling out since long despite having availed sufficient times .It all show the Court has been dragging on evidence of the workman, a proceeding that seems to come to a grinding halt due to nonappearance of witness on the part of the workman. But added to the exposure the case either to has been resolved or workman's own approach /initiatives paid off, as it stayed rolling over one stage for a long span of time. As the workman is no longer interested to proceed with hearings in the instant case to get to the final adjudication. So it should not be rolled out as Reference any more due to sheer disinterestedness on part of the workman. Therefore, it does not see to hold it otherwise rather inclined to close it down immediately just to save sheer wastage of time and energy. As such the case is closed as non-existence of dispute between the parties concerned. An order of 'No Industrial Dispute Award' is passed, accordingly.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2017

का.आ. 2896.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 07/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.12.2017 को प्राप्त हुआ था।

[सं. जेड-16025/3/2017-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th December, 2017

S.O. 2896.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2014) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 12.12.2017.

[No. Z-16025/3/2017-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present : Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B.
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No.07 of 2014

In the matter of an Industrial Dispute between :-

Workman Mr. Mrinal Saharia, Udalguri, BTAD, Assam, …Claimant

-Vrs-

The Management of Life Insurance Corporation of India,
Divisional Office, Guwahati and 05 Others. …Management

APPEARANCES :

For the Workman : Mr. S.K. Sahariah, Learned Advocate.

For the Management : Mr. A. Kundu, Learned Advocate.

Date of Award : 15.11.2017

AWARD

1. This Application under sub-Section (2) and (3) of Section 2A of the Industrial Dispute Act, 1947 read with Sub-Section 2 of Section 33(C) of the Act was filed by the claimant/petitioner Sri Mrinal Saharia before this Tribunal on 01.05.2014. The claimant was originally engaged on contractual basis as Financial Service Executive at Life Insurance Corporation of India, Mangaldoi for a period of three years and subsequently his contract was renewed for one more year and later his contract was not extended further. On termination of his engagement he approached the Regional Labour Commissioner (C), Guwahati but after holding of conciliation proceeding the matter ended in failure and thereafter the workman filed this petition directly before this Tribunal as per the provision quoted above. Vide order dated 08.05.2014 my learned Predecessor admitted the petition and registered as Reference Case u/s 2A of the I.D.Act. On receipt of summons the management side appeared and submitted their written statement.

2. The facts averred by the claimant in his claim application was that with a desire of making a career in the field of Insurance, he acquired license to canvas Life Insurance business and after having executed a bond on 08.09.2008 he was engaged as a Financial Sales Executive in LICI, Mangaldoi for three years. As per terms and conditions executed between the claimant and the LICI he was engaged for a period of 3 years which was renewable at the sole discretion of the LICI for another 2 years. Minimum business parameters were laid down in the agreement. It was also claimed that as per the guidelines of the LICI regarding allotment of alternate channel agents outlet to the Financial Service Executive it was decided that each Financial Service Executive would be allotted not more than 30 channels but not less than 15 outlets. According to the claimant in violation of the aforesaid guidelines the claimant was allotted only 6 bank outlets against the minimum 15 bank outlets. On execution of the agreement the claimant joined in the post of Financial Sales Executive at Mangaldoi on 10.11.2008. It was also claimed that after his successful achievement of the targets laid down for him he was granted an extension for another period of one year, after completion of three years, and was allotted to the Mangaldoi Office of LICI. As per his engagement for the 4th year he was required to bring a total minimum new business of 360 lives and FPI of Rs.14,00,000/-. According to the claimant he managed to achieve the target, rather his achievement was much more than minimum required. It was further claimed that vide communication dated 28.07.2012 the LICI relaxed the target of Financial Service Executive who have completed the yearly targets. It was also provided that in case a Financial Service Executive fails to manage to procure the stipulated minimum eligible FPI in two consecutive quarters he will be liable for termination subject to the discretion of the Authority to relax the same. It was also stated that a Policy No. 485762156 was wrongly credited to the Central Bank of India Sipajhar Branch though the said policy ought to have been credited to the Central Bank of India in Dimakuchi Branch. The claimant stated that he informed about the mistake to the Authorities vide his communication dated 01.02.2013 and 07.02.2013. It is further stated that while the claimant was continuing with his work he came to know from the competent authority that his engagement was considered for termination on account of shortfall in the 3rd and 4th quarter of the 4th year. The claimant then submitted a representation on 15.02.2013 to the Authority and explained that the shortfall in the 3rd and 4th quarter of the 4th year were beyond his control and was on account of flood and communal violence in the locality during that time. The claimant thereby prayed for condonation of the aforesaid shortfall. It was also mentioned that a termination letter dated 16.02.2013 was issued to him terminating his engagement as Financial Service Executive with effect from 01.12.2012. Thereafter the claimant submitted a

representation before the competent authority but no decision was taken on that. After waiting for reasonable time the claimant approached the Regional Labour Commissioner (C), Guwahati for intervening in the said wrongful and illegal termination. It was also stated that although the LICI terminated his service with effect from 01.12.2012, the LICI accepted the premium collected by the claimant through his business efforts till the month of June, 2013 but did not pay him any remuneration for the period December,2012 to June, 2013. The applicant, among other reliefs, sought relief of setting aside of the order of termination letter dated 16.02.2013 and passing of an Award to direct re-engagement for the 5th year. The claimant also prayed for direction for releasing his remuneration from the month of December,2013 to June, 2013.

3. The management/Opposite Party appeared and contested the claim by filing written statement wherein the main plea taken by the management was that the claimant was never a workman of the management and he was just an Agent for procuring business on behalf of the management. It was stated that his nature of work was neither manual,unskilled, skilled, technical, operational, clerical nor supervisory, hence, he can not be considered as workman as per Section 2(s) of the I.D.Act. It was also stated that the claimant was engaged for specified period through a contract for procuring business for the Corporation as per the Agreement which was executed between the claimant and the management of the LICI. It was also stated that as per the agreement the extension of the engagement of the claimant was the sole discretion of the management and as he failed to achieve the stipulated target his contract was not renewed after the completion of 4th year. It was also stated that after his initial engagement for 3 years in the year 2008 as per the clause of the agreement he was given engagement for a period of one year with stipulated target to achieve but as in the 3rd and 4th quarter of the 4th appraisal year of his engagement he could not achieve the target, his engagement was terminated. In brief the main contention of the LICI was that the claimant has never been a workman of the management. Rather he was engaged as a Financial Service Executive and his engagement as well as the termination as Financial Service Executive was strictly as per the agreement between the claimant and the management of LICI. It was also stated that since the claimant was not a workman this Tribunal has got no jurisdiction to decide the matter.

4. Upon consideration the pleadings of the parties my learned Predecessor framed the following issues for decision.

"1) Whether the Reference is maintainable in its present form under Sub Section (2) & (3) of Section 2A, Section 33C (2) of the Industrial Dispute Act, 1947?

2) Whether the claimant is a workman under Industrial Dispute Act.?

3) Whether the contract entered into between the parties is a contract for service or contract of service?

4) Whether an agent of Life Insurance Corporation is an employee of the Corporation?

5) Whether the claimant fulfills the target fixed by the Management?

6) Whether the action of the Management in disengaging the claimant is arbitrary and against the principle of natural justice?

7) Whether the claimant is entitled to any relief as prayed for ?"

5. During argument there was a broad argument that the prime issue in the matter will be whether the claimant was a workman under the I.D.Act or not? If he is found to be a workman the remaining issues shall also have to be decided but if it is found that the claimant was not a workman under the management and there was no relationship of employer and employee between the management and the claimant, the remaining issue will be redundant.

6. It appears to me that for effective determination of the matter, Issues No. 1 & 2 are required to be decided first. I shall therefore, deal with the evidence adduced by the parties in this matter to decide the aforesaid three issues. As the aforesaid three issues are closely linked with each other these will be decided together as under.

7. Both sides examined one witness each. In his evidence the claimant Sri Mrinal Sahariah (W.W.1), narrated the basic facts like his joining in the LICI at Mangaldoi as Financial Service Executive on 10.11.2008 on the basis of an agreement for 3 years. This agreement was exhibited as Exhibit-1. Exhibit-2 is the copy of the letter of his appointment wherein the details of the terms of selection and minimum business parameter etc. were mentioned. His joining report was also exhibited as Exhibit-4. He further stated that on completion of 3 years of job contract successfully his contract as Financial Service Executive was extended for one more year vide Exhibit-5 and Exhibit-5 specifically mentioned the business parameter. It was also stated that on completion of extended 4th year of his engagement the management claimed that he could not achieve his target for the 3rd & 4th quarter of the 4th year. It was also stated that on scrutiny it was found that one life was wrongly credited under the FSE Code of his own colleague and he made representation for correction the same. He further claimed that on completion of 4th year he was allowed to work with effect from December,2012 to June,2013 but for this period he was not paid remuneration though the management accepted the

premium collected and deposited by him to the management during that period. He exhibited certain documents. Exhibit-9 and 10 specified the business procured by him during the quarter December,2012 to March 2013 & April 2013 to June,2013. Another document sought to be exhibited by him showing his attendance for the period December,2012 to June, 2013 was objected by the management side. He further stated that the termination letter was handed over to him in the month of August,2013 though the date therein was 16.02.2013.

8. He was cross-examined at length by the management side and it appeared that the engagement of the claimant in terms of the agreement was not in dispute in this matter. The witness also admitted that there was no specific provision in the agreements (Exhibit-2) and (Exhibit-5) that the management was bound to re-engage him. He further admitted that his job was marketing assessment and dealing with Bank Outlets and clients. During cross-examination the witness stated that on Exhibit-6 and Exhibit-7 there clearly appeared erasing of dates. Admittedly those documents were submitted and exhibited by the witness himself. The witness however denied the suggestion that he had tempered the aforesaid documents. During cross-examination he was also confronted with the copy of a document as Exhibit-A which was a representation submitted by the witness on 15.2.2013 to the Sr. Divisional Manager, LICI whereupon his signature is also exhibited as Exhibit-A(1). The witness also admitted that in Exhibit-8 the number of life and EFPI in respect of the 2nd quarter of the 4th year has been shown as 189 and Rs.822877/- respectively whereas in Exhibit-A the number of life and EFPI in respect of the same quarter of the same year was shown as 190 and Rs.8.29/- lacs. He also admitted that as per Exhibit-A the number of life and EFPI in respect of 3rd quarter of the 4th year was 68 & Rs. 2.36 lakhs respectively though in Exhibit-8 (proved by the witness), business procured by him in the 3rd quarter of the 4th year was (the number of life and EFPI) were shown as 68 and Rs.2,55,000/-. The witness however denied the management suggestion that Exhibit-8 was not issued by the management and he himself had manufactured the same. He also admitted that in his evidence in-chief he mentioned that Exhibit-6 was his letter dated 09.02.2013 whereas Exhibit-6 revealed that letter was dated 01.02.2013. He further admitted that in para-14 of his claim application he mentioned that termination letter was issued on 16.02.2013 but in evidence-in-chief he stated that it was handed over to him in the month of August,2013. The management suggestion was that the termination letter was issued to him on 16.02.2013. He also admitted that his contract for engagement was extended upto 4th year and no further extension was granted by the management. He however stated during cross-examination that after completion of his 4th year he continued to work. The witness also denied the management suggestion that the documents Exhibits-8, 9,10,11 and 12 were manufactured by him. He also admitted during the cross-examination that his job was mainly marketing and he is bound to fulfill the target. He also stated during his cross-examination that due to his failure to fulfill the target for 3rd and 4th quarter of his 4th year of service, his service was not continued by the management. He also stated that though in his claim statement he mentioned that he was not paid remuneration for the month of December, 2012 but in reality he has received his remuneration for the month of December,2012, which he mentioned in his evidence-in-chief.

9. Management side examined one Sri Prasanta Kumar Barman who was serving as Manager (Bank and Alternate Channel), Life Insurance Corporation of India, Guwahati Division at the time of giving evidence. According to him the Financial Service Executive are engaged by the LICI to canvass LICI business and their terms of appointment are decided through an agreement with them. Their primary duty is to interact with the clients, visit Bank Branches and outlets to canvass for new business for the Company but they are not subject to any direction from the Corporation as to how and when they attend their client and visit Bank outlets. The witness further stated that the duty of the FSE is one of promotional in nature by which he is supposed to promote the various products of the Company and they do not receive any benefit like gratuity, bonus, Medical benefits and Pension etc which a regular employee is entitled to get. The facts regarding engagement of the claimant in the LICI , Mangaldoi through an agreement are not in dispute in this case. The witness further stated that if the Financial Service Executive failed to procure the stipulated minimum new business in 2 successive quarters his engagement is terminated. He further stated that initially the claimant was engaged through a contract for a period of 3 years from 2008 and later his engagement was extended by one more year. But in the 3rd and 4th quarter of the 4th year the claimant could not procure the stipulated new business and hence his engagement was not extended after completion of the 4th year. The witness further stated that the business procured by the claimant after completion of the 4th year with full knowledge that his contract had expired was completely illegal and he illegally utilized his previous identity to procure business. He however stated that the LICI accepted those business to protect its reputation and also to protect the interest of the policy holders and same could not be considered to be a ground for his re-engagement.

10. During cross examination he stated that he did not know whether the claimant was required to get 15 outlet but was given 6 outlets for work. He also admitted that on 16.2.2013 by a letter the claimant was notified by the Chief Manager (MB & AC) that his engagement as FSE has been terminated by the competent authority with effect from 01.12.2012. The witness also admitted the document which was marked as Annexure-L and was exhibited by the management witness as Exhibit-F. On perusal of the Exhibit-F it appears that the termination of the claimant as FSE was noted down with effect from 01.12.2012 but was communicated to him vide letter dated 16.02.2013. The witness also admitted that the claimant procured business for LICI till June, 2013 and the business procured by the claimant

during the period December, 2012 to June, 2013 was accepted by the LICI in the interest of its reputation. The witness also admitted that during that period from December, 2012 to June,2013 no remuneration was paid to the claimant.

11. From the evidence of the parties, as discussed aforesaid, it appeared that the claimant was indeed engaged by the management as Financial Service Executive for a period of three years through an agreement and there was a provision that the period of engagement could be extended for further two years at the discretion of the management. From the agreement (Ext 1), it was absolutely clear that the maximum period of engagement of the claimant could be five years at the sole discretion of the management. It also clearly appeared that terms of engagement of the claimant was extended for one more year with a rider that he would be obliged to procure a minimum amount of business for the management. It also appeared from the evidence (including the documents) that the business procured by the claimant during 3rd & 4th quarters of 4th year of his engagement was short of the stipulated target. Admittedly, his engagement did not appear to be in the nature of a workman and was wholly guided by the agreements between the claimant and the management. As per the original agreement he was engaged for 3 years with a provision for extension for 2 more years at the discretion of the management. However, his engagement was extended for one year but on completion of the 4th year his engagement was not extended on the ground that he failed to achieve the business target. Failure to achieve the business target was clearly proved. On careful perusal of the engagement contract (Ext 1) of the claimant and his designation (Financial Service Executive) and subsequent extension for one year (Ext 5) revealed that he could not be considered as a "workman" as per the provisions of sec 2(s) of the I. D. Act, 1947. He was virtually an agent of the management to procure new business and terms of his engagement was clear that he was not engaged as a "workman" within the meaning of Industrial Dispute Act, 1947. In view of this, the reference brought under Sub Section (2) & (3) of Section 2A, Section 33C (2) of the Industrial Dispute Act, 1947 appears to be not maintainable. The issues No.1 & 2 are decided accordingly. Since the claimant has been held to be not a workman of the LICI, he clearly, appears to be not entitled to any relief under the provisions of Industrial Dispute Act, 1947. This reference therefore, is not maintainable. However, certain points, raised by the claimant regarding non- payment of remuneration for a certain period for which he actually continued to procure business for LICI may be a matter for adjudication and the claimant, is at liberty to approach appropriate forum for decision on those points, if he so desire. Since the claimant is held to be not a workman, this point cannot be adjudicated by this Tribunal.

12. Send the no relief Award to the Ministry as per procedure.

Given under my hand and seal of this Court on this 15th day of November,2017 at Guwahati.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2017

का.आ. 2897.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैसर्स पी. सी. बांगूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 30/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.12.2017 को प्राप्त हुआ था।

[सं. एल-29012/6/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th December, 2017

S.O. 2897.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2014) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. P.C. Bangur Minerals Limited and their workman, which was received by the Central Government on 01.12.2017.

[No. L-29012/6/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 30 / 2014

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं. L- 29012/6/2014 –IR(M) दिनांक 02/04/2014

Shri Durgesh Kumar Kumawat & other,
C/o Mahamantri,
Pathar Khan kamgar Union,
Bengali Colony, Cantt.,
Kota (Rajasthan)

v/s

1. The Manager,
M/s P.C. Bangur Minerals Ltd.,
Chechut Lime Stone Mines,
Tehsil - Ramganj Mandi,
Dist - Kota (Rajasthan)

प्रार्थी की तरफ से : श्री नरेन्द्र कुमार तिवारी – एडवोकेट

अप्रार्थी की तरफ से : श्री रूपिन काला – एडवोकेट

: पंचाट :

दिनांक : 30. 10. 2017

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड़ (घ) के अन्तर्गत दिनांक 02.04.2014 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :–

> "Whether the action of the management of M/s P.C. Bangur Minerals Ltd., in terminating the services of Shri Durgesh Kumar Kumawat S/o Shri Bhairulal and Shri Om Prakash Rathore S/o Mangi Lal w.e.f. 08.11.2012 is legal and justified? What relief the workman are entitled to?"

2. स्टेटमेन्ट ऑफ क्लेम मे दिये गये तथ्यों के अनुसार श्रमिकगण श्री दुर्गेश कुमार कुमावत पुत्र श्री भेरू लाल एवं श्री औमप्रकाश पुत्र श्री मांगी लाल राठौड़ का कथन संक्षिप्ततः यह है कि श्री दुर्गेश कुमार कुमावत की नियुक्ति 8.3.2005 को हेल्पर (मेकेनिक) तथा श्री औमप्रकाश राठौड़ की नियुक्ति 28.11.05 को नियुक्ति वाटर पम्प (हेल्पर) के पद पर हुई थी। आगे कथन है कि वे नियोजक के यहां दिनांक 8.11.2012 को जब डयूटी कर रहे थे तो वेतन भुगतान के लिये दिन के लगभग 12.30 बजे कार्यालय में बुलाया गया। श्रमिकगण को वेतन देने के समय श्रमिक ओमप्रकाश से तो धोखे से दो रजिस्टरों पर हस्ताक्षर करा लिये गये जबकि प्रत्येक माह एक रजिस्टर पर वेतन भुगतान कर हस्ताक्षर कराये जाते थे। श्रमिक दुर्गेश कुमार ने दो रजिस्टर पर हस्ताक्षर करने से मना कर दिया तो उसके साथ गाली गलौच की गयी एवं श्रमिकगण को वेतन का भुगतान भी नहीं किया गया उन्होनें बोनस की मांग की तो उन्हें बोनस भी नहीं दिया गया और भगा दिया गया।

3. श्रमिकगण इसके बाद से रौजाना नियोजक के यहां साप्ताहिक अवकाश को छोडकर डयूटी हेतु आ रहे है, परन्तु नियोजक विपक्षी ने श्रमिकगण को डयूटी पर नहीं लिया। श्रमिकगण ने दिनांक 12.11.2012 को पत्र भेजकर डयूटी पर लेने की मांग की परन्तु नियोजक ने श्रमिकगण को डयूटी पर नहीं लिया और इस पत्र का उत्तर भी नहीं दिया। इसके बाद श्रमिकगण ने दिनांक 29.11.12 को डयूटी पर लेने के सम्बन्ध में रिपोर्ट के साथ नियोजक के यहां अपनी उपस्थिति दी परन्तु नियोजक ने उपस्थिति रिपोर्ट को लेने से मना कर दिया और श्रमिकगण को डयूटी पर लेने से भी मना कर दिया दोनों श्रमिकगण को उपस्थिति रजिस्टर पर हस्ताक्षर नहीं करने दिया और कहा कि ''तुमको जो करना हो कर लो, काम पर नहीं लगायेगें''। श्रमिकगण को मजबूरी वश उक्त उपस्थिति रिपोर्ट को रजिस्टर्ड ए.डी. डाक से भेजना पडा जो नियोजक को प्राप्त हो चुकी है। नियोजक ने इसका भी श्रमिकगण को कोई उत्तर नहीं दिया। इस प्रकार से नियोजक ने श्रमिकगण को दिनांक 8.11.2012 से ही निकाल दिया है, जो अवैध है।

4. श्रमिकगण ने नियोजक के यहां पर उक्त अवधि में 240 दिन से काफी अधिक समय तक कार्य किया है।

5. श्रमिकगण का विवाद औद्योगिक विवाद अधिनियम 1947 की धारा 2 (ओ.ओ.) के अन्तगर्त ''छंटनी'' की परिभाषा में आता है।

6. नियोजक ने श्रमिकगण को नौकरी से निकाले जाने के पूर्व औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ के प्रावधानों के अनुसार एक माह का नोटिस नहीं दिया और न इसके बदले में एक माह के अग्रिम वेतन का भुगतान ही किया। इसके अतिरिक्त नियोजक ने श्रमिकगण को नौकरी से निकाले जाने के पूर्व छंटनी का मुआवजा भी नहीं दिया है और न ही देने का प्रस्ताव किया है।

7. नियोजक ने श्रमिकगण को नौकरी से निकालने के पूर्व औद्योगिक विवाद (केन्द्रीय) नियमावली 1957 के नियम 77 के प्रावधानों के अनुसार वरिष्ठता सूची का प्रकाशन भी नहीं किया है। श्रमिकगण को नौकरी से निकाले जाने के समय श्रमिकगण से कनिष्ठ अन्य कई श्रमिक नियोजक के नियोजन में मौजूद एवं कार्यरत थे। इस प्रकार नियोजक ने श्रमिकगण को ''लास्ट कम फर्स्ट गो'' के सिद्धान्त को नकार कर नौकरी से निकाला है, जो औद्योगिक विवाद अधिनियम 1947 की धारा 25 जी के प्रावधानों की अवहेलना है।

8. नियोजक ने श्रमिकगण को नौकरी से निकाले जाने के बाद अन्य श्रमिक सेवा में नियोजित कर लिये है, परन्तु श्रमिकगण को नियोजन हेतु अवसर प्रदान नहीं किया है, जो औद्योगिक विवाद अधिनियम 1947 की धारा 25 एच के प्रावधानों की अवहेलना है तथा नियोजक का यह कृत्य ''अनुचित श्रम व्यवहार'' की परिभाषा में भी आता है।

9. श्रमिकगण ने नियोजक से भारत सरकार द्वारा समय समय पर घोषित न्यूनतम वेतन दर से कम वेतन देने पर आपत्ति की थी, इस कारण से नियोजक ने श्रमिकगण को नाजायज परेशान कर रहे है और डयूटी पर नहीं ले रहे है।

10. प्रार्थी यूनियन ने नियोजक को रजिस्टर्ड ए.डी.डाक द्वारा दिनांक 19.12.2012 को पत्र भेजकर पत्र प्राप्ति के 3 दिन में श्रमिकगण को डयूटी पर लेने की मांग की, अन्यथा अवधि समाप्त होने पर सक्षम श्रम कानूनों के अन्तर्गत कानूनी कार्यवाही करने की सूचना दी जो नियोजक को प्राप्त हो गया, परन्तु नियोजक ने श्रमिकगण को डयूटी पर नहीं लिया और इस पत्र का भी कोई उत्तर भी नहीं दिया। श्रमिकगण ने प्रार्थना की है कि उन्हें नियोजक के यहां पिछले सम्पूर्ण वेतन सहित समस्त पिछले लाभों के साथ सेवा में पुनः नियोजित कराया जाय तथा प्रार्थी यूनियन को नियोजक से खर्चा मुकदमा एवं अन्य न्यायोचित सहायता दिलाया जाय।

11. याचिका के विरूद्ध जवाब में विपक्ष का कथन है कि विपक्षी संस्थान में प्रार्थीगण दैनिक वेतनभोगी के रूप में हेल्पर के पद पर कार्यरत थे एवं दोनों याचीगण दिनांक 8.11.12 को दोपहर बाद कार्य पर आना स्वयं बन्द कर दिये। विपक्षी याचीगण के नियोजक नहीं है एवं याचीगण द्वारा उनकी नियुक्ति की दर्शायी गयी तिथियां गलत है। श्री दुर्गेश कुमार दिनांक 1.11.08 तथा श्री औमप्रकाश दिनांक 24.7.06 को प्रथम बार कार्य पर उपस्थित आये थे।

12. आगे कथन है कि विपक्ष ने प्रार्थीगण को कार्य पर वापस आने हेतु दिनांक 23.11.12 एवं 12.12.12 को पत्र भेजे थे तथा दिनांक 12.12.12 को पंजिकृत डाक से भेजे गये पत्र उन्हें प्राप्त भी हो गये थे फिर भी प्रार्थीगण कार्य पर वापस नहीं लोटें। दिनांक 8.11.12 को रजिस्टर में हस्ताक्षर करवाने का कथन प्रार्थीगण का मनगढ़न्त कथन है क्योंकि ऐसी कोई घटना उस दिन प्रार्थीगण तथा विपक्षी के मध्य नहीं हुआ।

13. प्रार्थीगण तथा विपक्ष के बीच बोनस अथवा वेतन भुगतान का कोई विवाद नहीं रहा है तथा विपक्ष सदैव वेतन तथा बोनस भुगतान हेतु तत्पर रहा है एवं दिनांक 22.12.12 को भी सहायक श्रम आयुक्त, कोटा के समक्ष प्रार्थीगण को कार्य पर उपस्थित होने तथा बकाया वेतन अथवा वर्ष 11–12 को बोनस को कार्यालय में आकर प्राप्त करने के लिए सूचित किया था, लेकिन यूनियन के बहकाने में न कार्य पर उपस्थित आये न भुगतान प्राप्त करने हेतु उपस्थित आये। प्रार्थीगण को कभी भी न्यूनतम वेतन से कम वेतन भुगतान नहीं किया गया है। विपक्ष द्वारा प्रार्थीगण को धमकाने की बात भी गलत है।

14. दिनांक 23.11.12 को प्रार्थीगण व्यक्तिगत रूप से विपक्ष ने कार्य पर आने के लिए पत्र देने का प्रमाण किया जिसे प्रार्थीगण ने लेने से इन्कार कर दिया था। प्रार्थीगण का कथन गलत है कि दिनांक 29.11.12 को कार्य पर उपस्थिति देने गये तो उन्हें कार्य पर उपस्थिति लेने से मना कर दिया गया। प्रार्थीगण ने किसी भी

वर्ष में 240 दिन से या उससे अधिक दिन कार्य नहीं किया है। प्रार्थीगण का वाद धारा 2 (ओ.ओ.) परिधि में नहीं आता है क्योंकि उन्हें कभी कार्य से नहीं हटाया गया एवं धारा 25 एफ के प्राविधान प्रार्थीगण के मामले में लागू नहीं होते हैं। प्रार्थीगण को कार्य से नहीं हटाया गया, इसलिए नोटिस देने की आवश्यकता नहीं थी। प्रार्थीगण स्वंय कार्य पर आना बन्द कर दिये एवं यूनियन के बहकावे में आकर विपक्ष के आग्रह पर भी कार्य पर नहीं आये। इस प्रकार विपक्ष के विरूद्ध धारा 25 जी, 25 एच एवं नियम 77 के उल्लंघन का भी कोई मामला नहीं बनता है कयोंकि ये प्राविधान लागू नहीं होते है। प्रार्थीगणों को विपक्ष द्वारा कभी भी कम वेतन नहीं दिया गया। याचिका के विरूद्ध प्रस्तुत जवाब में दिये गये आधारों पर प्रार्थीगण की याचिका खारिज की जाय।

15. विपक्ष के जवाब के विरूद्ध याची पक्ष ने प्रत्युत्तर प्रस्तुत कर याचिका के कथन की पुनरावृत्ति की है एवं जवाब में प्रस्तुत कथन को अस्वीकार किया है। जवाबुलजवाब के कथन के समर्थन में याचीगण ने अभिलेख संलग्न किये है।

16. श्री दुर्गेश कुमार कुमावत एवं श्री ओमप्रकाश राठौड़ ने याचिका के समर्थन में शपथ—पत्र प्रस्तुत किया और श्री दुर्गेश कुमार की प्रतिपरीक्षा की गयी। श्री ओमप्रकाश राठौड़ की प्रतिपरीक्षा लम्बित रहने के दौरान पक्षकारों के मध्य सुलह करने की वार्ता सम्पन्न हुई। दिनांक 30.10.17 को लोक अदालत में पक्षकारों ने सुलहनामा प्रस्तुत किया जिसके आधार पर प्रार्थी की याचिका का निस्तारण किया गया। सुलहनामा दिनांकित 30.10.17 निम्नवत् है :—

समक्ष केन्द्रीय सरकार औद्योगिक न्यायाधिकरण व श्रम न्यायालय जयपुर (राज.)

वाद संख्या सी.जी.आई.टी. 30 / 2014

दुर्गेश कुमार कुमावत व अन्य **बनाम** पी.सी. बांगड मिनरल्स

वास्ते समझौता अवार्ड पारित किये जाने हेतु

महोदय,

उपरोक्त वाद माननीय न्यायालय के समक्ष तथा कथित दिनांक 8.11.12 के सेवामुक्ति के सम्बन्ध में लम्बित है। विपक्षी ने जवाब प्रस्तुत कर निवेदन किया है कि प्रार्थीगण ने दिनांक 8.11.12 को दोपहर पश्चात कार्य पर आना बन्द कर दिया।

प्रार्थीगण विपक्षी संस्थान में दैनिक वेतन पर कार्यरत थे। प्रार्थी दुर्गेश कुमार व ओमप्रकाश ने विपक्षी से प्रार्थना की है कि वे समझौता करना चाहते है तथा नये सिरे से वे कार्य करना चाहते है। प्रार्थी ने निवेदन किया है कि उनका जो बकाया भुगतान है वह उन्हें दिला दिया जावे तथा व दिनांक 8.11.12 से आज दिनांक 30.10.17 तक की कोई राशी की मांग नहीं करेंगे न ही वाद संख्या 30 / 14 में प्रस्तुत क्लेम सम्बन्धित मांग करेंगे।

विपक्षी ने प्रार्थी की प्रार्थना पर विचार कर निर्णय लिया है कि प्रार्थी का जो कोई 8.11.12 से पूर्व का कोई बकाया है जो ओमप्रकाश का 40,000 है व दुर्गेश का 20,000 रूपये है उसे वह दे देंगे। तथा नये सिरे से पूर्व की भांति नई नियुक्ति आज से तीन दिन में प्रदान कर देंगे तथा 8.11.12 से आज दिन का जो भुगतान / राशि सेवा की निरन्तरता इत्यादि का कोई लाभ नहीं देंगे।

दोनों पक्ष उक्त समझौते से राजी हैं। अतः इस परिपेश का समझौता अवार्ड पारित करने का श्रम करें।

वास्ते विपक्षी

हस्ताक्षर अपठनीय

(इन्द्रदेवसिंह) दिनांक 30.10.17

प्रबन्धक

वास्ते प्रार्थी

दुर्गेश

ओमप्रकाश

30.10.17

हस्ताक्षर पठनीय दुर्गेश

हस्ताक्षर पठनीय ओमप्रकाश

30.10.17

17. सुलहनामे के आधार पर प्रार्थी की याचिका का निस्तारण करते हुए निम्न आदेश पारित किया गया :–

30.10.2017 **लोक अदालत**

आज पत्रावली लोक अदालत में प्रस्तुत हुई। पुकार की गयी। उभयपक्ष के विद्वान प्रतिनिधि उपस्थित है। याचीगण श्री दुर्गेश कुमार और ओमप्रकाश राठौर उपस्थित है। विपक्ष की तरफ से श्री इन्द्रदेव सिंह प्रबन्धक उपस्थित है।

पक्षकारों द्वारा सुलहनामा प्रस्तुत किया गया। सुलह की शर्तें उभयपक्ष को पढ़कर सुनाई एवँ समझायी गयी। पक्षकारों ने सुलहनामा स्वेच्छया करना स्वीकार किया। प्रबन्धन ने स्वीकार किया है कि आज की तिथि से तीन दिन के अन्दर दोनों कर्मचारीगण/याचीगण को सुलहनामा में अंकित धनराशि का भुगतान कर देंगे एवं उन्हें सेवा में पुनः नयी नियुक्ति पर रख लेगें। यह भी सहमति पक्षकारों में बनी कि प्रार्थीगण निर्धारित अद्यतन न्यूनतम वेज (wage) प्राप्त करेंगे। सुलहनामा दिनांकित 30.10.17 एवार्ड का अंश होगा।

18. न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तद्नुसार पारित किया जाता है ।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 20 दिसम्बर, 2017

का.आ. 2898.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 22/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.12.2017 को प्राप्त हुआ था।

[सं. एल-30012/5/2012-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th December, 2017

S.O. 2898.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2012) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Limited and their workman, which was received by the Central Government on 07.12.2017.

[No. L-30012/5/2012-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 7th day of November, 2017

INDUSTRIAL DISPUTE No. 22/2012

Between:

Sri Degala Ramu,
D.No.36-92-234,
ASR Nagar, Burma Camp,
Kancharapalem (Post)
Visakhapatnam-530008 …Petitioner

AND

1. The Executive Director/Director-Marketing,
HPCL, Headquarters Office,
Petroleum House, 17, Jamshedji Tata Road,
Mumbai - 400020

2. The General Manager,
BU SZ, HPCL, South Zone,
Post Box No.3045,
Gandhi Irwin Road,
Egmore, Chennai – 600 008

3. The Chief Installation Manager,
HPCL, Visakha Terminal,
PB No.1106, Malkapuram,
Visakhapatnam – 530 011 …Respondents

Appearances :

For the Petitioner : M/s. G.V.L.N. Murthy & M. Govind, Advocates

For the Respondent : M/s. M. Ravindranath Reddy & B. Sri Narayana, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-30012/ 5/2012-IR(M) dated 4.6.2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of Hindustan Petroleum Corporation Limited, Visakha Terminal, Visakhapatnam in dismissing the services of Shri Degala Ramu, Ex-Filler vide order dated 2.3.2010 is legal and justified? What relief the workman is entitled to?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 22/2012 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The Petitioner was appointed in the Respondents' corporation on 6.11.1987 and since then he worked to the utmost satisfaction of his superiors till his dismissal from service with effect from 2.3.2010. It is stated that while the Petitioner was working as a Filler, the third Respondent has issued proceedings suspending his services with immediate effect on the allegation that "information was received by the Executive Operating Officer (Planning) Sri V. Chandrasekhar that Tank Truck No.AP 31 U 2529 was loaded under Product Delivery Report (PDR) No.7006225 R1 with "excess product" and was about to leave the terminal." The above PDR number is incorrect and the correct No. is 7005969 as per the records. Though the alleged incident allegedly occurred on 22.8.2007, no opportunity was given to the Petitioner to explain the facts and he was suspended on 10.9.2007 followed by charge sheet dated 17.10.2007. The Petitioner submitted his explanation denying all the charges explaining all the aspects in detail with respect to his duties and the duties of other officers involved in the process of filling and delivery of commodities. One domestic enquiry was ordered by the 2nd Respondent without considering the explanation of the Petitioner. The Enquiry Officer acted biasedly during the enquiry proceeding, and submitted his report biasedly. He purposefully ignored some documentary evidence which is in favour of the Petitioner and as per his report 1st charge was not proved. Without application of mind, the 2nd Respondent dismissed the services of the Petitioner vide order dated 2.3.2010. On the date of the alleged incident i.e., on 22.8.2007, after completion of day's duty, the Petitioner left the office by 16.30 hrs, before his leaving the office he was verbally asked to narrate the facts regarding the loading T.T. and accordingly he has submitted the same. But detection of excess load was not done in his presence, nor his explanation was called for. All the officers who signed in the inspection report were not physically present at the time of detection, assessment and unloading the alleged excess product load, which is a daily, mandatory practice to note the opening and closing reading from the storage tanks. On 22.8.2007, the Petitioner was posted to fill the TTs from ST No.HSD 291 as per the invoice. The "excess report" for that day prepared by Sri P. B. Murali Krishna, CIM does not show any variation from which it is clearly evident that there is no possibility of excess loading by the Petitioner in any TT, particularly in TT No.AP 31 U 2529. This aspect was ignored by the Enquiry Officer. In the enquiry the Ramp Officer to whom power was given by the Respondents had clearly and categorically stated that when he has checked the T.T., with dip rod, it was found OK and no excess product was filled. The procedure in vogue is as follows: the TT after necessary

examination will be placed on one of the ramps. The filler like the Petitioner sits in between two ramps and operates two taps levers on either side with his two hands. The driver/cleaner of the vehicle stands on top of the Tanker and asks the filler to close the tap when the tank is filled to the approximate level. The filler does not contain any apparatus (flow meter) for measuring the quantity. After filling, the Ramp Officer checks the quality as well as quantity with dip rod and confirms the quantity and passes the invoice and the tanker will be allowed to leave the ramp in his presence. It is clear that the Petitioner is not at all concerned with the variation of quantity loaded into the tank for which he can not be penalised. Hence, the termination of the Petitioner is unfair, unreasonable, arbitrary and in violation of the principles of natural justice. Therefore, it is prayed that the suspension order dated 10.9.2007 of the 3rd Respondent and dismissal order dated 2.3.2010 of the 2nd Respondent be set aside and direct the Respondents to reinstate the Petitioner into service with retrospective effect, full back wages and grant all other consequential benefits.

3. Respondents filed their counter with the averments in brief as follows:

It is submitted that the Petitioner during the relevant period, was working as Tank Truck Filler in Visakh Terminal. While he was on duty on 22.8.2007 in General Shift commencing from 08.00 hrs to 16.30 hrs, Sri V. Chandrasekhar, Executive Operations Officer (Planning) received a phone call that Tank Truck bearing No.AP 31U 2529 was loaded with excess product and was about to leave the terminal premises. Then he immediately informed the security to inform as and when the said truck approaches for sealing/locking. When the said truck arrived, he conducted surprise check and found the truck was filled up to the brim level in all the four compartments. The same was appraised to the Chief Installation Manager, Visakha Terminal who appointed a team comprising of said V. Chandrasekhar, B.V. Rao, Sr. Manager-Installation and Shri D.V.R.S. Rama Rao, Manager – Installation to take charge of the truck and check once again the excess quantity filled. Accordingly, it was checked in presence of the Petitioner and it was found loaded upto the brim in all the four compartments of the said truck to the tune of 5840 litres of HSD. In view of the seriousness and gravity of the acts committed by the Petitioner he was placed under suspension under clause 32(4)(a) of the Certified Standing Orders applicable to him with immediate effect by the 3rd Respondent vide proceedings dated 10.9.2007. The Petitioner submitted his explanation which was found unsatisfactory and an enquiry was ordered and duly conducted. During the course of enquiry the Presenting officer examined 6 witnesses, marked 11 documents on behalf of the management. The Petitioner examined Sri G.G. Venkateswarlu, Loco Operator, on his behalf. That the Petitioner participated in the enquiry proceeding and the witnesses examined on behalf of the management were duly cross-examined. The Enquiry Officer submitted his report holding the Petitioner as guilty of the charges under clause 31.4 of the certified Standing Orders. Then the 2nd Respondent imposed the punishment of dismissal from the services of the corporation on the Petitioner in terms of Clause 31(1)(g) of the Certified Standing Orders applicable to him vide proceedings dated 2.3.2010. He was given fair opportunity to show-cause against the dismissal order. Hence, he is not entitled to get any relief as prayed for and the reference be ordered in negative.

4. None disputed about the validity of the domestic enquiry conducted in this case and, as such, in the circumstances, it is held that the domestic enquiry conducted in the present dispute is legal and valid vide order dated 12.11.2013.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. **In view of the above facts, the points for determination are**:

I. Whether the action of the management of HPCL, Visakhapatnam in dismissing the services of Shri Degala Ramu, Ex-Filler vide order dated 2.3.2010 is legal and justified?

II. Whether the Petitioner is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. The Learned Counsel appearing on behalf of the Petitioner contended that the Petitioner was appointed under the Respondent management on 6.11.1987 and worked to the utmost satisfaction of his superiors till 2.3.2010. While he was working as a Filler, the third Respondent issued proceedings suspending his services with immediate effect on the allegation that "information was received by the Executive Operating Officer (Planning) Sri V. Chandrasekhar that Tank Truck No.AP 31 U 2529 was loaded under Product Delivery Report (PDR) No.7006225 R1 with "excess product" and was about to leave the terminal." The above PDR number is incorrect and the correct No. is 7005969 as per the records. Basing on such allegation the Petitioner submitted his show-cause and thereafter an enquiry was conducted and in the enquiry though the allegation not proved he was found guilty of the charges on probability and circumstances, the 2nd Respondent dismissed the services of the Petitioner vide order dated 2.3.2010. It is also contended that on the date of the alleged incident i.e., on 22.8.2007, after completion of day's duty, the Petitioner left the office by 16.30 hrs, before his leaving the office he was verbally asked to narrate the facts regarding loading of the T.T. and accordingly he has submitted the same. Even though detection of excess loading was done but such detection of excess load was not done in his presence, nor his explanation was called for. The officers who detected the excess

loading not prepared the report in his presence on 22.8.2007. In fact, on 22.8.2007, the Petitioner was posted to fill the TTs from ST No.HSD 291 as per the invoice. The "excess report" for that day prepared by Sri P. B. Murali Krishna, CIM does not show any variation from which it is clearly evident that there is no possibility of excess loading by the Petitioner in any TT, particularly in TT No.AP 31 U 2529. But this aspect was not reflected by the Enquiry Officer in his report. During the enquiry the Ramp officer who had been given power to verify and check, has categorically stated that when he checked the T.T., with dip rod, it was found OK and no excess product was filled. More over, the TT after necessary examination will be placed on one of the ramps. The filler like the Petitioner sits in between two ramps and operates two taps levers on either side with his two hands. The driver/cleaner of the vehicle stands on the top of the Tanker and asks the filler to close the tap when the tank is filled to the approximate level. The filler does not contain any apparatus (flow meter) for measuring the quantity. After filling, the Ramp Officer checks the quality as well as the quantity with dip rod and confirms the quantity and passes the invoice and the tanker will be allowed to leave the ramp in his presence. It is clear that the Petitioner is not at all concerned with the variation of quantity loaded into the tank but for this allegation the punishment imposed on the Petitioner is quite illegal. The termination order passed by Respondent No.2 against the Petitioner is unfair, unreasonable, arbitrary and in violation of the principles of natural justice.

8. On the other hand the Learned Counsel appearing on behalf of the Respondents contended that on 22.8.2007 while the Petitioner was on duty in General Shift commencing from 08.00 hrs to 16.30 hrs, Sri V. Chandrasekhar, Executive Operations Officer (Planning) received a phone call to the effect that Tank Truck bearing No.AP 31U 2529 was loaded with excess product and was about to leave the terminal premises. There after he immediately informed the security to intimate as and when the said truck approaches for sealing/locking. When the said truck arrived, he conducted surprise check and found the truck was filled up to the brim level in all the four compartments. The same was appraised to the Chief Installation Manager, Visakha Terminal who immediately appointed a team comprising of said V. Chandrasekhar, B.V. Rao, Sr. Manager-Installation and Shri D.V.R.S. Rama Rao, Manager – Installation to take charge of the Tank truck and check once again the excess quantity filled. Accordingly, it was checked in presence of the Petitioner and it was found loaded upto the brim in all the four compartments of the said truck to the tune of 5840 litres of HSD. After receipt of the report considering the gravity of the offence committed by the Petitioner he was placed under suspension under clause 32(4)(a) of the Certified Standing Orders applicable to him with immediate effect calling upon the Petitioner to submit his explanation. The Petitioner submitted his explanation pleading innocence, which was found unsatisfactory and accordingly an enquiry was ordered, and duly conducted. During the course of enquiry the Presenting officer examined 6 (six) witnesses, marked 11 (eleven) documents on behalf of the management. The Petitioner examined Sri G.G. Venkateswarlu, Loco Operator, on his behalf. The Petitioner participated in the enquiry proceeding and the witnesses examined on behalf of the management were duly cross-examined. The Enquiry Officer submitted his report holding the Petitioner as guilty of the charges under clause 31.4 of the certified Standing Orders. Thereafter, 2nd Respondent imposed the punishment of dismissal from services. The Petitioner was given fair opportunity to file show-cause against the dismissal order. Even though the Petitioner submitted his explanation, it was not accepted and the Petitioner was dismissed from services. The Petitioner has been rightly dismissed from service and he is not entitled to get any relief.

9. On consideration of the rival contentions of both the sides, and on perusal of the materials available on record, it is seen that the Enquiry Officer conducted the enquiry holding the Petitioner as guilty of the charges on the ground of probability and circumstances. The guilty of the Petitioner has been proved basing on circumstances and probability. But the guilty of the Petitioner should be proved beyond all reasonable doubt. One can not be held guilty only basing on probability and circumstances. It is alleged that the Petitioner told the crew to fill the truck with excess product and money could be transacted later on outside the premises, but, there is no cogent evidence available against the Petitioner to show in which manner such type of conversation and transaction was made. In absence of any cogent evidence it can not be stated that the Petitioner has done the excess filling of product. Furthermore, the filling is alleged to have been done in presence of the Driver and the Cleaner of the T.T. But during the course of enquiry though both of them has been examined but they have not supported the allegation of the Management, even they have failed to identify the Petitioner when they were called upon to identify. Both the witnesses are even unable to remember the incident. At the time of filling only the Driver and Cleaner were present. Both of them are the material witnesses for the moment. But, none of the witnesses have seen the excess loading done by the Petitioner. When there is no direct evidence available against the Petitioner only basing on surmise, it can not be stated that the Petitioner has done the excess loading. Further more, admittedly at the time of filling the flou meters was not visible to the filler from the operating place and as such it was not working. Moreover, the Tank Truck loading Ramp Officer (TT LRO) being the superior officer was present at the time of filling of the TT by the filler with the help of the crew and in his presence the TT is to be filled up. When there was excess loading of the TT how the TTLR was not vigilant and not responsible for it and he has shifted his responsibility on the filler to get rid of the charges. The Petitioner being a lower grade employee has been held responsible. When there is no cogent evidence available against him, the guilty of the Petitioner has been proved only on consideration of probability and circumstances and basing on such

probability, the main charge has been proved and the Enquiry Officer has also stated that other connected charges are inter-alia found proved. All the charges should be proved independently. More over, one can not be punished only on consideration of probability and circumstances. The charges are to be proved beyond of all reasonable doubt. In the instant case, only basing on the probability and circumstances, the Petitioner has been found guilty which is not tenable in the eye of Law and basing on such findings of the Enquiry Officer, the Management of HPCL, Visakhapatnam has dismissed the Petitioner from the services and such dismissal order dated 2.3.2010 is not legal and justified.

This Point No.I is answered accordingly.

10. **Point No.II**: In view of the aforesaid findings given in Point No.I, the Petitioner is entitled for reinstatement into service and he is entitled for the benefits as prayed for.

This Point No.II is answered accordingly.

RESULT:

In the result, the reference is ordered as follows:

The action of the management of HPCL, Visakhapatnam in dismissing the services of Shri Degala Ramu, Ex-Filler vide order dated 2.3.2010 is not legal and justified. The Petitioner is entitled to be reinstated into service. The Respondent is directed to reinstate the Petitioner into service with 50% back wages, continuity of service and all other consequential benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 7th day of November, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 20 दिसम्बर, 2017

का.आ. 2899.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 49/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.12.2017 को प्राप्त हुआ था।

[सं. एल-17012/32/2013-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th December, 2017

S.O. 2899.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 01.12.2017.

[No. L-17012/32/2013-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 9th day of October, 2017

INDUSTRIAL DISPUTE No. 49/2014

Between:

Sri Ch. Venkateswara Rao,
S/o Polaiah,
Indira Yanadi Colony,
Behind Taluka Office,
Repalle – 522265, Guntur District …Petitioner

AND

1. The Sr. Divisional Manager,
   LIC of India, Divisional Office,
   Kenndy Road, Machilipatnam.
2. The Divisional Manager,
   LIC of India, Repalle Branch,
   Repalle, Guntur district. …Respondents

Appearances :

For the Petitioner : None

For the Respondent : Representative

AWARD

The Government of India, Ministry of Labour by its order No. L- 17012/32/ 2013-IR(M) dated 5.3.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India, and their workman. The reference is,

SCHEDULE

"Whether the removal from service of Shri Ch. Venkateswara Rao, Ex-Temp. Class-IV, LIC of India, Repalle Branch w.e.f. 28.1.2013 is justified or not? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 49/2014 and notices were issued to the parties concerned.

2. The case was posted for filing of claim statement and documents by the Petitioner.

3. But, inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to raise any claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 9th day of October, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 20 दिसम्बर, 2017

का.आ. 2900.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 35/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.12.2017 को प्राप्त हुआ था।

[सं. एल-17011/11/2008-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th December, 2017

S.O. 2900.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2009) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 07.12.2017.

[No. L-17011/11/2008-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/35 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

LIFE INSURANCE CORPORATION OF INDIA

The Sr. Divisional Manager
LIC of India, Mumbai Division-I
Yogashema
Jeevan Beema Marg,
Mumbai-400 021.

AND

THEIR WORKMEN

The General Secretary
Rashtriya Bima Karmachari Union
98/1, Belgrami Road
Kurla (W)
Mumbai-400 070.

APPEARANCES :

FOR THE EMPLOYER : Mr. M.V. Damle, Advocate.

FOR THE WORKMEN : Ms.Kunda Samant, Advocate.

Mumbai, dated the 26th September, 2017.\

AWARD PART-II

The Government of India, Ministry of Labour & Employment by its Order No.L-17011 / 11 /2008-IR (M), dated 23.03.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> *"Whether the action of the management of LIC of India, MDO-I, Mumbai by reducing the basic pay by five stages permanently in time scale in respect of Shri B.R. Pai is justified? What relief the workman Shri B.R. Pai is entitled to?"*

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, second party union has filed its statement of claim at Ex-3. According to the union, its member Shri Baba Ramchandra Pai was appointed as Typist in 1974. He served for more than 33 years and he is working as H.G.A. and was getting successive

promotions throughout. His service was unblemished. One Shri Ajay Vaish a policy holder bearing no.73662727 has deposited a cheque of Rs.3911/- by way of yearly instalment of his policy. The said cheque was adjusted against the policy of the workman bearing no.900196220 for his instalment of March 2001. Another cheque deposited by Mr. Ajay Vaish through his agent Mr.Mayur Kapadia of Rs.4280/- for his policy. Instead of his policy it is alleged that the said cheque was adjusted against the LIC policy of wife of the workman. It is alleged that the workman has also claimed income tax deductions of the said amount for the respective years. Therefore the officials of the first party alleged that, the policy numbers written at the rear side of the cheques were forged and changed by the workman. Therefore the workman was charge-sheeted for the alleged fraud and forgery.

3. The first party appointed Inquiry Officer and Presenting Officer. The I.O. was bias. Mr. Vaish has deposited the two cheques against his policy through his agent Mr. Mayur Kapadia. They are relevant witnesses, however they were not examined in the inquiry proceeding. They were not made available for cross examination. No opportunity was given to the workman to defend himself. The principles of natural justice were not followed in the inquiry proceeding. The Inquiry Officer held the workman guilty. The findings of the Inquiry officer are perverse. On the basis of inquiry report, the disciplinary authority has imposed punishment of reduction in basic pay of the workman by five stages permanently. The disciplinary authority ignored the representation of the workman submitted to them. The appeal of the workman was also dismissed. Therefore the union has raised industrial dispute before the ALC (C). As conciliation failed, on the report of ALC (C), the Central Labour Ministry sent the reference to this Tribunal. The union therefore prays that the punishment be set aside and first party be directed to restore the basic pay with retrospective effect and consequential benefits and also prays for direction to pay arrears of the deducted amount with interest @ 18 % p. a. and also prays for order to pay compensation to the workman with heavy cost of the proceeding.

4. The first party management resisted the statement of claim vide their written statement at Ex-6. According to them workman Shri Pai was working as H.G.A. in Branch 901 under Mumbai Division. His LIC policy was bearing no.900196620. The premium of Rs.3911/- was due and payable for the month March, 2001. A customer, Mr. Ajay Vaish had to pay his insurance premium of his policy no.73662727. Thus he had drawn a cheque bearing no.365593 dated 14/03/2001 on Punjab National Bank, Juhu Scheme, Vile Parle (W), Mumbai and sent the same to LIC branch No. 901, through his agent Shri. Mayur Kapadia. The policy no. was written on the reverse side of the cheque. However the number was changed from 73662727 to 900196620 which is pertaining to workman Mr. Pai. Workman Mr. Pai also claimed income tax rebate on the said fraudulent payments of renewal premium in the financial year 2000-2001. Similarly another cheque of Shri Vaish for an amount of Rs.4168/- for premium due on August 1997 was found to have been adjusted towards the premium of policy no.900189392 which is the policy of Smt. Sunanda Pai, wife of the workman. The said cheque was deposited by Shri Ajay Vaish for his policy no.73662727 and the said number was written at the rear side of the cheque which was forged and changed to 900189392. The workman had forged the policy numbers on both the cheques and ultimately both these cheques were credited in the account of workman and his wife respectively. Therefore workman was charge-sheeted for the alleged misconduct. Inquiry Officer was appointed. He conducted the inquiry. Full opportunity was given to the workman to defend himself. He cross examined the witnesses of management. He was also given an opportunity to lead his own evidence.

5. After hearing both the parties, the Inquiry Officer held the workman guilty for the charges levelled against him. The inquiry was conducted after giving sufficient and fair opportunity to the workman to defend himself. He was also allowed to appoint defence representative. The inquiry was conducted in accordance with the principles of natural justice. As workman was held guilty for serious charges, the management instead of dismissing the workman from services took lenient view and reduced his pay by five stages permanently. The inquiry was fair and proper. Findings of the Inquiry Officer are not perverse. Therefore the first party prays that the reference deserves to be dismissed.

6. As per the Award Part – I passed by this tribunal the enquiry held is fair & proper and the findings of the Enquiry officer are held not perverse. Thereafter the parties led evidence. I have also heard the arguments of both the parties.

7. Following issues were framed at Ex.8A. I reproduce the issue Nos. 2, 3 & 4 and my findings thereon for the reasons to follow are as under.

Sr. No.	**Issues**	**Findings**
2.	Whether the punishment of reducing the basic pay of the said employee by 5 stages permanently in time scale is adequate ?	Yes.
3.	Whether the employee Mr. B.R. Pai is entitled to any relief ?	No.
4.	What order ?	As per final order

REASONS

Issue No. 2 :

8. Learned Counsel for the second party workman submitted that the punishment imposed is shockingly disproportionate because stagnation increments were already granted but revoked against the staff regulation No.39 (d) Co-circular No. PER/ER/AG-364 dated 26.8.97. He submits that penalty reduction in basic pay in terms of Regulation 39 is to be imposed in the time scale only therefore stagnation increment, graduation allowance, fixed personal allowance once granted cannot be withdrawn to give effect to the penalty imposed in Regulation 39. With this the submission is that due to drastic punishment, he took voluntarily retirement on 1.11.2010.

9. In this respect if we see the evidence of concerned workman, he admits in his cross examination that his normal date of retirement is 31.12.2011 and he has taken the voluntarily retirement w.e.f. 1.11.2010. He then admits in his cross examination that in his application for retirement, he has mentioned that he was giving that application due to unavoidable circumstances in family and personal life. It is clear therefore that in his application for retirement he has not mentioned that the reason beyond his retirement was depression due to drastic punishment. It cannot be accepted therefore that he took the retirement on account of depression due to drastic punishment. The question therefore creeps in whether the punishment imposed by the management by reducing the basic pay by the stages permanently in time scale in respect of the concerned workman is justified or not ?

10. So far the legal position is concerned, the court would not interfere with the administrative decision unless it was illegal or suffered from procedural impropriety or irrational in the sense it was outrageous, defiance of logic or moral standards. It is held in the decision in case of Domoh Panna Sagar Rural Rational Bank & Ors V/S. Munnalal Jain CA No. 8258 of 2004 [SC] that

> *"Unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rate cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."*

11. The scope of judicial review is also limited to the deficiency of decision making process and not the decision. It is therefore necessary to see whether the order of disciplinary authority imposing the punishment by reducing basic pay by the stages permanently in the time scale is shockingly disproportionate.

12. AT the first blush, I would observe that as per the observations of this tribunal in Part – I Award it is clear that there is evidence to show that the cheques of Mr. Vaish were credited against the life policies of concerned workman and his wife. Both the cheques were issued by Mr. Ajay Vaish drawn on his account maintained in Punjab National Bank. Policy numbers of the life policy of Mr. Vaish were changed and the numbers of the policies of the workman and his wife were written by forging the original numbers. These observations are based on documents such as entries of cheques of Mr. Vaish credit against the policies of workman and his wife respectively. It cannot be said therefore that the disciplinary authority has given disproportionate punishment for no fault of concerned workman when infact it was admitted by him in his cross examination that the opportunity was not denied to him to disprove such documents which are placed on record. Even he admits in his cross examination that his statement in his affidavit to the effect that he was denied the opportunity to file memorial is incorrect. As a matter of fact, he had addressed a memorial dated 16.7.2007 under Regulation 39 of The LIC of India [Staff] Regulation, 1960 and Chairman has passed speaking order dated 12.6.2008 in the said memorial. On the basis of these aspects it cannot be said that the punishment imposed upon the workman for his serious misconduct is shockingly disproportionate.

13. Even then the Learned Counsel for the concerned workman submitted that due to reduction in basic pay and revoking two stagnation increments, the concerned workman suffered monetary loss. He submits that there is difference of Rs.3641/- p.m. in his salary from March 2007 onwards as compared to Salary of February 2007 and due to punishment imposed on him he suffered total loss in basic pension for 66 months to the tune of Rs.2,37,600/- and D.A. difference loss to the tune of Rs.15,796/-. The submission is also to the effect that the concerned workman suffered loss of gratuity amount to the tune of Rs.2,36,000/- and he also suffered loss in Group Saving Life Insurance Scheme due to reduction in basic pay by 5 stages permanently at Rs.1,25,000/- instead of Rs.2,70,000/-. To be precise the submission is that due to punishment he took voluntary retirement and therefore he suffered the monetary loss.

14. This submission is not acceptable. Final payment of Provident Fund and the other monetary loss which he suffered has no relevance because the misconduct is proved. Enquiry which was held is proper and findings of the Enquiry Officer are also not perverse. It is not proved that he took retirement due to imposition of punishment. Infact his retirement has no connection with the quantum of punishment. All these benefits which he would have received are governed by different rules which have no connection with the Regulation 39 of The LIC of India [Staff] Regulation, 1960. Regulation 39 provides for the penalties which is to be imposed only in case of employees who commits breach

of discipline or guilty of any other act pre-judicial to good conduct. Once the penalty of basic reduction is imposed the workman cannot interpret the provisions of Regulation 39 of The LIC of India [Staff] Regulation, 1960.

15. Considering all these facts and the limited scope of judicial review, I find that there is no scope to interfere with the punishment imposed by the disciplinary authority.

16. As a matter of fact, the appellate authority has also considered the grounds raised by the appellant and has come to the conclusion that the contention raised by him are not tenable as the charges stand proved on the basis of evidence on record. Even on going through the order of Chairman, it appears that memorial dated 16.7.2007 preferred by the concerned workman was considered and the contentions raised by him were found not relevant to the charges levelled against him stand proved on the basis of evidence adduced during the enquiry.

17. In this respect hand can be laid on the decision in case of LIC of India & Ors. V/s. S. Vasanti, Civil Appeal No. 7717 of 2014 wherein Hon'ble Apex Court with reference to decision in case of Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) & Anr. V/S. Rajendra Singh (2013) 12 SCC 372 has held;

"a) when charge(s) of misconduct is proved in an enquiry, the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

b) The courts cannot assume the function of disciplinary / departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to be remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case."

18. Learned Counsel for the concerned workman also seeks to rely on the decision in case of Girni Kamgar Sena & Ors V/S. R.D. Rane & Ors. 1995 I CLR 851 to submit that when the punishment is shockingly disproportionate the punishment can be reduced. In that case petitioners No. 1 & 2 participated in the strike and there was no allegation of any violence whatsoever or incitement to violence. 2 out of 4 workers have been reinstated. In the circumstances, it has been observed that even accepting that all the 4 workers participated in the illegal strike in view of fact that there was absolutely no violence, that the strike was only for couple of hours and that admittedly 2 workers similarly situated were reinstated suggest that misconduct was not of such degree and the nature, as to invite maximum penalty of dismissal.

19. So the facts in the cited case are quite different and distinguishable

20. Learned Counsel for the concerned workman has placed reliance on the decision in case of Arjun Kumar Biswa V/S. Union of India & Ors. 1995 I CLR 704. In that case there was finding of the Enquiry Officer that the constable fell asleep because he was feeling very weak. They also show that constable was not deputed specifically and exclusively to guard criminals. In the circumstances it has been observed that punishment of removal from service is disproportionate to offence charged and proved. So the facts in this case are also distinguishable.

21. Reliance is also made on the decision in case of Jagdishchandra Maganlal Trivedi V/S. State Bank of India, 2005 I LLJ Pg. 236. In that case it was finding of the fact that non-reporting of shortage of cash promptly to the higher authority was considered by the bank as negligence on the part of appellant. But no specific period has been specified for such reporting in any circular. In the circumstances the Hon'ble High Court held that no misconduct of negligence or other lapse has been proved against the appellant and the punishment itself imposed by the appellate board was illegal.

22. Here in the instant case misconduct is proved, enquiry is held to be fair and proper, findings are proper and therefore it cannot be said that the misconduct is not proved.

23. In the facts of present case, I find that the punishment imposed by disciplinary authority on account of misconduct of the concerned workman cannot be said to be shockingly disproportionate. The punishment imposed upon him is of reducing basic pay of the said employee by 5 stages permanently in time scale. He took retirement due to unavoidable circumstances in family and personal life and therefore monetary loss which he suffered was because of his decision of taking voluntary retirement, 14 months prior to his normal date of retirement. So far punishment is concerned that has been imposed on the ground of his misconduct which has been proved and therefore this issue will have to be answered in the affirmative.

Issues Nos. 3 & 4 :

24. In view of my findings to issue No.2, the concerned employee is not entitled to any relief. Hence the order:

ORDER

Reference is rejected with no order as to costs.

Date: 26/09/2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2017

का.आ. 2901.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स न्यू इण्डिया एश्योरेंस कम्पनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 37/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.12.2017 को प्राप्त हुआ था।

[सं. एल-17012/54/2008-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th December, 2017

S.O. 2901.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2009) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. New India Assurance Company Limited and their workman, which was received by the Central Government on 06.12.2017.

[No. L-17012/54/2008-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/37 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

NEW INDIA ASSURANCE COMPANY LTD.

The Chief Manager-Corp. HRM IDD
New India Assurance Company Ltd.,
New India Assurance Bldg., 87,
M.G. Road, Fort,
Mumbai – 400 001.

AND

THEIR WORKMEN

Smt. Joytica Chunawala,
Flat No.11, Divya Jyoti Apartment,
S.F.S. Flat, Pocket C,
Rohini, Sector - 19,
New Delhi - 110085.

APPEARANCES :

FOR THE EMPLOYER : Ms. Nandini G. Menon, Advocate

FOR THE WORKMEN : Mr. M. B. Anchan, Advocate

Mumbai, dated the 21st September, 2017

AWARD PART - I

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-17012/54/2008 – IR (M) dated 02.04.2009. The terms of reference given in the schedule are as follows :

> "*Whether the action of management of New India Assurance Company Ltd., Mumbai by terminating the services of Smt. Jyotica Chunawala w.e.f. 12.8.2005 is justified ? What relief the workman, Smt. Jyotica Chunawala is entitled* to ?"

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. The concerned workman has filed statement of claim Ex.9 contending therein that she was employed in the year 1997 to the post of Assistant [Typing]. She had absolutely clean and unblemished service record and had reached the grade of Sr. Assistant in the employment of company at Mumbai. She had completed about 18 years of service.

4. According to the concerned workman, she was enable to report for work for some days on account of personal difficulty and injury caused to her while in foreign country. She had gone abroad with permission and sanctioned leave. It was only on account of unavoidable circumstances, she was enable to report and there was no intention to cause inconvenience or disobey the orders of her superiors. However, the enquiry was conducted and by letter dated 12.8.05 the company has imposed major penalty of removal from service in respect of concerned workman. The departmental appeal in respect of the same is also dismissed vide orders dated 2.9.05 and 28.6.07 passed by the appellate authority and the Chairman & Managing Director. She therefore filed WP No. 6920 of 2007 challenging the said order. The said writ petition came up for hearing on 9.1.08 and Hon'ble High Court opined that the writ petition was not maintainable in view of alternate remedy under the Industrial Disputes Act, 1947.

5. According to the concerned workman, ex-parte enquiry was held in the matter in breach of principles of natural justice. Even though the concerned workman has informed about her inability to attend the enquiry due to burn injuries suffered by her. Inquiry officer as well as Appellate authority committed gross error on the face of record in totally ignoring the explanation given by the concerned workman in her several letters. As such the enquiry conducted in the matter was totally one sided and illegal. The Enquiry Officer was biased. The report of the Enquiry Officer suffered from non-application of mind. As such the enquiry is not fair proper and the findings are perverse. The impugned punishment as well as orders of the authority and CMD are passed without considering all the material on record especially the written explanation and medical certificates submitted by the concerned workman. As such the punishment imposed upon the workman is grossly unjust. She therefore raised the dispute for adjudication. She is therefore asking for reinstatement with full back wages and continuity of service.

6. The first party New India Assurance Company Ltd. [employer] resisted the claim by filing written statement Ex.19 contending therein that the second party workman remained absent continuously and unauthorisedly without prior sanction / approval of the competent authority from 20.7.2003 to 28.1.2004 for a period of 193 days. Since she was failing and neglecting to abide by the lawful orders of her superiors and since she was remaining absent from duty and not reporting for work without any prior sanction of her superiors and without having any leave to her credit, the first party was of the opinion that the second party has violated rule 3.1 (i), (ii), (iii), (iv), Rule 18 (1) which are termed as 'misconduct' under Rule 4 (5), (6), (7), (17) and (20) of The New India Assurance Company Limited (Conduct, Discipline and Appeal) Rules 2003. Accordingly, the concerned workman was issued charge sheet vide memorandum dated 28.1.2004, statement of imputation of misconduct dated 28.1.2004 and Articles of charges dated 28.1.2004 setting out in detail the charges of misconduct made against her. She was charged with remaining unauthorisely absent without prior approval and sanction of competent authority from 20.7.2003 till 28.1.2004 and for failing and neglecting to abide by the lawful orders of her superiors. Mrs. Alka Banage was appointed as Enquiry officer. Mrs. S.R. Tarkar, was appointed as Presenting Officer. Several opportunities were given to the concerned workman to remain present and defend herself but she remained absent. Enquiry officer commenced and completed the enquiry proceedings in strict compliance with applicable rules, principles of natural justice and after complying with the procedural rules. The Enquiry officer held that all the charges against the concerned workman as set out in the memorandum have been proved. The copy of the report was furnished to the concerned workman and she was called upon to submit her representation. The concerned workman made her submission against report and findings of the Enquiry officer. The second party workman did not submit her representation. Since the disciplinary authority concurred with the report and findings of the Enquiry officer, looking into the gravity and seriousness of charges of misconduct proved against the second party workman, the disciplinary authority imposed the major penalty of removal from service of the company which shall not be disqualification for future employment as provided under Rule 23 (g) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975.

7. It is thus case of the management that the enquiry is fair and proper and the penalty imposed on second party workman is within the scope and ambit of applicable rules. It is thus denied by the management that service record of the second party workman was unblemished. It is also denied by the management that the second party workman is unemployed after her removal from service and that she tried but could not get the employment due to her age factor. First party management has thus sought the rejection of reference.

8. Following issues are framed at Ex.20. The issue No.1 is treated as preliminary issue. Hence, I reproduce the issue No.1 along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the inquiry conducted by the inquiry officer against the workman Smt. Jyotica Chunawala was fair and proper and findings are not perverse ?	Yes

REASONS

Issue No. 1

9. Learned Counsel for the concerned workman submitted that the concerned workman on 15.5.2002 has made an application to the management for sanction of 47 days leave from 3.6.2002 and the said leave was sanctioned. During the leave period itself she had requested the management to extend her leave for one year without pay or extra-ordinary leave but the same was not considered. She made an application dated 16.5.2002 for leave and seeking permission to go abroad. That leave was sanctioned to her vide letter dated 4.6.2002 and she was also granted permission to go abroad. He submits that the management has sanctioned her leave on loss of pay for one year from 19.7.2002 and the concerned workman had then requested the management for permission to work at Port Louis branch of the management at Mauritius but the same request was rejected and even the application dated 10.8.2003 for extension of leave for further one year from 10.8.2003 was also not replied. In this view the submission is that the charge of unauthorisedly remained absent for duty for the period of 190 days was not sustainable but then the ex-parte enquiry was conducted which was against the principles of natural justice.

10. In this respect, if we see the evidence of the concerned workman she admits in her cross examination that the management had sent her letter informing that she was not eligible for foreign service as per foreign service rules of the company. She even admits that leave was sanctioned by the company and she went abroad and the company had repeatedly sent her letters asking her to report for duty. So admittedly the concerned workman was absent on duty since her husband's posting was at Mauritius from 2002 to December 2015 and for this period though she had made an application for foreign posting. It was rejected on the ground that she was not eligible for foreign service. The question is whether her absence from duty can be considered as gross misconduct and whether the enquiry in that respect was conducted in fair and proper manner or not ?

11. For, it is explicit, from the enquiry proceedings that second party workman was issued charge sheet and she denied the allegations of misconduct made against her. Thereafter Mrs. Alka Banage was appointed as Enquiry Officer vide letter dated 22.4.2004 which is at Sr. No.12 to Ex.21. Mr. S.R. Tarkar was appointed as Presenting Officer vide letter dated 22.4.2004 which is at Sr. No.13 to Ex.21. The names of the Enquiry Officer and Presenting Officer were informed to the concerned workman by the disciplinary authority vide letter Ex.45. By letter Ex.47 the concerned workman requested for speaking order detailing the grounds on which her submissions were found satisfactory before holding domestic enquiry and vide letter Ex.46, the first party advised the second party to report for duty and attend the enquiry proceedings. By letter at Sr. No.18 to Ex.21, second party expressed her inability to attend the enquiry proceedings on the ground of under going medical treatment for accidental injury sustained by her and requested that the enquiry proceedings be adjourned. So, it appears that at the time of enquiry held on 9.7.2004, the second party chose to remain absent.

12. In her cross examination the second party workman has stated that she was not admitted in the hospital for the treatment of burn injuries. Even the fact remains that after taking rest for six weeks as required as per medical certificate the concerned workman was requested to remain present by giving notice / letter dated 13.7.2004 which is at Ex.48 and she was requested to remain present for domestic enquiry on 3.8.2004. But then again on 3.8.2003 the concerned workman chose to remain absent and then thereafter also on 11.8.2004 the concerned workman was absent during the enquiry proceedings and that she had not even replied letter dated 3.8.2004. It appears from the enquiry proceedings that by letter dated 20.8.2004 the concerned workman requested for adjournment of the enquiry proceedings scheduled on 31.8.2004 and she was informed by letter dated 25.8.2004 which is at Ex.50 by disciplinary authority that her request for extension of leave could not be allowed and she was directed to report for duties and to attend the enquiry proceedings. But then she remained absent on 31.8.2004 at the time of enquiry hearing. Again on

3.9.2004 vide Ex.51 the Enquiry officer requested the second party to remain present at the enquiry on 1.11.2004 but then the concerned workman chose to remain absent. This would show that the second party workman was repeatedly asked to remain present and to participate in the enquiry proceedings but she chose to remain absent. It appears therefore that there was complete compliance of the principles of natural justice and fair & adequate opportunity was given to the concerned workman to appear in the enquiry proceedings. When she elected to remain absent then the management cannot be penalized for the second party workman's decision to remain absent.

13. So far findings of the Enquiry officer are concerned, the record shows that second party workman remained absent continuously from duties without any prior permission. Initially she had applied for leave and the leave was sanctioned. She made an application for going to Mauritius and permission was granted. But then the fact remains that thereafter she did not join the services and made an application with a request to permit her to work at Port Louis branch of the management at Mauritius but and that was rejected because she was not eligible for the same. Thereafter she again made an application for leave for one year which was not sanctioned and then she remained absent though her leave was not sanctioned. On the basis of this record it can be observed that she remained absent from duty after sanctioned leave period was exhausted. The concerned workman has also not adduced satisfactory evidence to justify her absence from duty. In view of that it can be observed that the findings of the Enquiry officer are based on evidence.

14. Even then the Learned Counsel for the concerned workman submitted that there were errors in the enquiry report. He points out that the memorandum served upon her was dated 28.1.2004 and as per the articles of charges which were framed against her vide memorandum dated 16.9.2003. He also pointed out that the daily order sheets are neither been sent to the concerned workman and these were the discrepancies in the enquiry report.

15. But then fact remains that the Enquiry officer corrected the mistakes and re-submitted the enquiry report vide Ex.55. That report was communicated to the second party workman who was called upon to submit her fresh representation in respect of report of the Enquiry officer. So the errors which were pointed out were corrected and those errors did not change the enquiry proceedings. It is because the Enquiry officer has not changed the enquiry report and the findings, the documents placed and proved in the enquiry proceedings speak for themselves.

16. Considering all these documents it can be said that the findings of the Enquiry officer are not perverse and infact these findings are based on evidence. Hence I answer issue No.1 accordingly in affirmative.

17. Hence, I pass the following order.

ORDER

1. Enquiry is held fair & proper.
2. Findings of the Enquiry officer are not perverse.
3. Parties are directed to argue / lead evidence on the point of quantum of punishment.

Date: 21.09.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2017

का.आ. 2902.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 29/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2017 को प्राप्त हुआ था।

[सं. एल-30012/38/2002-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th December, 2017

S.O. 2902.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2011) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Limited and their workman, which was received by the Central Government on 30.11.2017.

[No. L-30012/38/2002-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1 : ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 29/2011

The Secretary,
Petroleum Worker Union,
C-160, Sarvodaya Enclave,
New Delhi – 110 017 …Workman

Versus

The General Manager,
Hindustan Petroleum Corporation,
11th Floor, Tower I, 124, Indira Chowk,
New Delhi 110 001 …Management

AWARD

Pursuant to receipt of reference vide letter No.L-30012/38/2002-IR(M) dated 21.02.2003 clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act), this court is required to adjudicate an industrial dispute, terms of which are as under:

> 'Whether the demands of the Petroleum Workers Union, New Delhi in regard to reinstatement and regularization of services of 12 numbers of contract labours (list enclosed) worked at Shakurbasti Installation of M/s Hindustan Petroleum Corporation Ltd. New Delhi are just, fair and legal? If yes, to what relief the workmen are entitled to and for which period?'

2. Both parties were put to notice and it is clear from statement of claim filed by the claimant that the claimants, namely S/Shri Ram Payare, Waris Ali, Jagan Nath, Kali Prasad, Prabhu Dayal, Mangal Singh, Ram Narain Rai, Bharat Singh, Basant Lal, Sarda Sewak, Ram Parkash and Ram Karan were employed by Hindustan Petroleum Corporation Ltd. (in short the management) in Shakur Basti installation, New Rohtak Road.

3. It is alleged in the statement of claim that the claimants were employed by the management through some contractors for the purpose of loading, unloading, removing of empty and filled lube oil drums and cartons containing mobil oil tins, stacking them and doing other various jobs connected with the main jobs carried on by the permanent employees of the Corporation. The aforesaid work is permanent and perennial in nature and handled by trained workmen. Claimants were employed regularly for the last 17-18 years by the management through various contractors and the said contractors were not genuine but a mere camouflage to employ the workman at the cost of 30 to 50% of the cost of regular labour.

4. Aforesaid claimants have been employed by the management since 1986 and all the claimants are members of Petroleum Workers Union, which is a registered trade union duly recognized by the management.

5. It is the case of the claimant that that engagement of contract labour in the Corporation has been a matter of concern to the unions in respect of job security of the claimants and the union has been taking up their matter with the management from time to time. On 18.09.1986, management signed a long term settlement with all the trade unions and in respect of their permanent workmen under Section 12(3) of the Act before the Regional Labour Commissioner (Central) in Bombay., wherein matter of contract labour was also discussed under Clause 21, is as under:

> 'The Corporation will take steps to review engagement of contract labour at its various establishments with a view to reduce/eliminate employment of such labour, as far as feasible. The first discussions will commence within six months from the date of signing of the settlement.'

6. In the year 1986-87, union took up the case of the workers regarding their engagement through contractors in in all the petroleum companies and finally the Under Secretary:Labour, Delhi Administration, issued the following orders prohibiting the employment of contract labour in the following process in any terminals/plants/depots/factories of petroleum industry from one month from the date of its publication:

(i) Loading/unloading of LPG cylinders

(ii) Loading/unloading of mobil oil tines and other miscellaneous materials

(iii) Removal of cylinders from one place to another and their stacking etc.

(iv) Putting the seal cap on the LPG cylinders

(v) Painting and number of gas cylinders

(vi) Supply of mobil oil containers from store to work place and putting back filled mobil oil tins to the stores

(vii) Packing of cartons of mobil oil tins

7. Thereafter a writ petition was filed by the management vide CWP No.1525 of 1987 in the High Court of Delhi, wherein management gave an undertaking and the Hon'ble High Court of Delhi passed the following order on 24.11.1987:

> 'Notice for January 7, 1988. Meanwhile the impugned notification of Delhi Administration is stayed to the extent that no prosecution should be launched to either of the petitioners for non-compliance with the terms of the notification. Counsel for the petitioner states that pending disposal of the writ petition neither the petition nor any of the authorized contractor will alter the conditions of service of the workmen to their prejudice whether by way of termination of their employment or inrgard to the emoluments payable to them. In other words, the status quo will continue so far as the workmen are concerned.

8. Since management in the above agreement had agreed to take steps to regularize contract labour in 9 months and had verbally agreed to take steps within 2-3 months union vide its letter dated 07.04.1989 addressed a letter to the Chief Regional Manager to expedite the matter, but of no use. In the meantime, another long term settlement with the All India Workmen of the Corporation became due. Management again signed a long term settlement under Section 12(3) of the Act on 05.03.1991 and clause 29 of the said settlement deals with contract labor. It is alleged that the claimants herein are shown to be workmen of the contractor only for namesake, otherwise they were performing regular nature of work in the premises of the management. Keeping in view the just demands of the workmen, letter dated 05.08.2001 was written for absorbing them against permanent vacancies. However, on 14.08.2001, management at Shakur Basti installation stopped entry of the claimants herein in the premises of the management and the so called contractors were directed to employ new workmen in place of the existing workers whose names are given above. The claimants had put in almost 17 years of continuous service and action of the management has been alleged to be totally unfair, illegal and against the provisions of Section 25-F and N of the Act.

9. It is also the case of the claimants that the so called contractors have not obtained licence as required under the Contract Labour (Regulation and Abolition) Act, 1970 (in short the CLRA Act) nor has the management obtained licence as required in terms of the provisions of the said Act. There is also reference to a number of judgements in the statement of claim, including that of Secretary HSEB vs Suresh and Others (1999) SCC 601 wherein the Hon'ble Apex Court has dealt with the question of genuineness of the contract between the principal employer and the contractors. Lastly, claimants have claimed that their termination/retrenchment be set aside and they be reinstated in service with all consequential benefits. The statement of claim is supported by affidavit.

10. Claim was demurred by the management who filed a detailed written statement taking various preliminary objections, including that of maintainability etc. It is also alleged that there is no relationship of employer and employee between the claimants and the management and the claimants are no more working with the management. There is no reference regarding contract being not genuine, sham etc., as such, thus point cannot be gone into by the Tribunal. On merits, management has denied most of the material averments. There is also reference to agreement dated 09.03.1994 between the management and the workmen whereby all matters and disputes pertaining to contract workmen at LPG Shakur Basti installation stood fully settled and there was no dispute was left between the parties. Claim is totally misconceived and false. It is also denied that the claimants are members of Petroleum Workers Union, New Delhi. It is further denied that the claimant union took up the cause of the claimants in the year 1986-87 with the management. It is also denied that the management has engaged new workers nor the management has dispensed with the services of the claimants herein. Therefore, there is no question of reinstatement. On the contrary, contractor was assigned the job under an agreement at Shakurbasti depot and had only 11 employees on his pay roll. Around May 2001, land was surrendered to Railway and lube handling was shifted to Shakurbasti main depot. Due to the merger of lube handling facilities and decrease in lube business there was reduction in requirement of manpower by the contractor as a result of which some of the claimants were not further engaged by the contractor. Subsequently, there was change of contractor who employed his own workmen with effect from 25.08.2002.

11. Claimant union filed rejoinder to the written statement filed by the management, reasserting that the claimants sere initially appointed by the management and they were directly in the said Corporation for the last 15-18 years. The management, from 01.06.1984, changed a number of contractors, whose names are as under:

(i) M/s Ranjit Singh & Co. from 01.06.1994

(ii) M/s Jagdish Enterprises from 01.12.1989

(iii) M/s Ranjit Singh & Co. from 01.01.1992

(iv) M/s Shyam Builders from 01.04.1993

(v) M/s Dinesh Enterprises from 01.01.1996

(vi) M/s Om Builders from 01.01.1999

12. The other averments made in the written stamen have been controverted.

13. Against this factual background, this Tribunal on the basis of the pleadings of the parties, vide order dated 30.11.2005, framed the following issues:

(i) Whether there exists relationship of employer & employee between the workman & management. If so, its effects?

(ii) Whether the management contractor is holding a valid registration u/s 7 of the Contract Labour Act? If so, its effects?

(iii) Whether the contractor holds valid licence u/s 12 of Contract Labour Act for the relevant period?

(iv) In terms of reference

14. Both parties adduced evidence in order to prove the averments contained in the respective pleadings. Claimants, in order to prove their case against the management, examined Shri Ram Pyare, Shri Prabhu Dayal, Shri Sharda Sewak and Shri K.L. Chhabra as WW1, WW2, WW3 respectively. Management in order to rebut the case of the claimant union examined Shri Ashwani Kumar Gupta as MW1 and Shri Balbir Singh Babberwal as MW2.

15. I have heard Shri K.L. Chhabra, A/R for the claimant union and Ms.Raavi Birbal, A/R for the management.

Issue No.(i)

16. This issue is legal in nature and it is clear from the averments made in the statement of claim that the claimants whose names are mentioned in the statement of claim alleged that they were working under the management directly from the beginning. However, after 1984, they were shown to be under different contractors for namesake only whereas management has come with the plea , as is clear from the pleadings that there is no relationship between the employer and employee, i.e. the claimants and the management. Management has also alleged in the written statement that management has assigned work to the contractors regarding loading, unloading, removing of empty and filled lube oil drums and cartons containing mobil oil tins, stacking them etc. During the course of arguments, learned A/R for the management in all fairness admitted that the claimants herein were working admittedly in the premises of the management at Shakur Basti installation but no officer of the management was exercising any kind of supervisory or administrative control over the claimants herein, who in fact, are employees of the contractors and not that of the management. It was also alleged that the salary of the above claimants were being paid directly by the contractor and officials of the management had noting to do with them. To my mind, there is no merit in the contention of the management that since the management has allotted the work of loading, unloading, removing of empty and filled lube oil drums and cartons containing mobil oil tins, stacking them etc., as is clear from the stand taken in the written statement, it was incumbent upon the management to have specifically mentioned name of the contractors to whom work was allotted, under the provisions of CLRA Act or otherwise from time to time. Admittedly as per the stand of the claimant, management was the principal employer and so called contractor was simply name lender or an agent of the principal employer. It is also neither in doubt nor in dispute that the claimants were doing work for benefit of the management in the premises of the management. Various documents filed by both the parties, particularly MW1/W2 to MW1/W8 shows that the claimants herein were working with the management and their EPF amount was also being deposited from time to time right from 1996-97. It is also clear from the wage/pay register Ex.MW2/W3 that claimants were working in the premises of the management, i.e. HPCL, from the year 1993 and deduction of ESI was also being made from the salary of the claimants, as required under the law. There is also memorandum of settlement dated 05.03.1991 , which was not disputed during the course of arguments and the name of Shri K.L. Chhabra, General Secretary, Petroleum Workers Union is mentioned and he has also signed the said settlement. This also shows that there was a dispute between the management and the workers regarding contract labour, including other issues. Shri Ashwani Kumar Gupta has also admitted in his cross examination that after perusal of record, he has found that the claimants herein were engaged in the premises of the management through contractor and their services were also terminated by the contractor. It is pertinent to point out here that Shri Ashwani Kumar Gupta, MW1, was given sufficient opportunity by this Tribunal to produce copy of the agreements between the management and the contractors, particularly the last contractor, which was signed between the management with the said contractor. However, at that time, no such copy was filed and MW1, in his further cross examination on 29.12.2011 he stated that he could not lay his hands any of the agreements entered into between the management and the contractor. He had also not brought on that day, list of contractors as mentioned in the registration certificate. To my mind, it would have been useful for the management to have examined atleast some of the contractors to whom work was allotted by the management from

time to time and copies of the agreements which was entered into between the management and such contracts were required to be proved in accordance with law so as to prove the plea or the claim that they were employees of the contractors and not that of the management. Since there is serious dispute of relationship of master and servant between the management and the contractor, , therefore production of these agreements was essential. All these documents were admittedly in possession of the management, who had initially taken the stand that no contract agreement is available in the office of the management. The case was deferred several times when statement of Shri Ashwani Kumar was recorded. Law is fairly settled that if a party in possession of documents does not produce such documents despite directions of the court and no plausible explanation is given by he said party for non-production of the same, in that eventuality, court is at liberty to draw adverse inference against the said party, more so when some of the documents which are favourable to the management have been placed on record whereas the other documents, despite directions, were not placed. In this regard, it is appropriate to refer to the admission made by Shri Ashwani Kumar MW1 who has clearly stated in his cross examination dated 25.05.2012 that the management deducted EPF subscription out of the wage of the claimants and he has given specific answer to the question put on behalf of the claimant. However, when appeared on the next date of hearing, he shifted the stand and said the management is the principal employer and there is no record available in the office of the management regarding deduction of EPF. When arguments were partly heard in the case, learned A/R for the management came with an application so as to show that the management was exempted from payment of ESI and in this regard invited attention of the court to Ex.MW2/2 which relates to exemption of ESI by the management. The question before this Tribunal is not whether the claimants ESI or EPF was being deducted or not. The sole question before this Tribunal is whether claimants are liable to regularized in view of order of termination passed against the said claimants.

17. Since engagement of the claimants herein is not directly in issue in the sense that the only dispute is whether the demand of the claimant union regarding termination or regularization of claimants is just and fair and the same would be decided while considering the reference made to this court by the appropriate Government. So far as the limited question of employer and employee relationship is concerned, management being the principal employer cannot be permitted to say that the claimants were not its employees. Management has also not examined any of the contractors so as to show that it was the contractors who has engaged the claimants herein or was exercising any kind of supervisory and administrative control over the said employees. In such a situation, this Tribunal is bound to draw adverse inference against the management. Accordingly, it is held that for limited purpose, the claimants herein, since they were working in the premises of the management, were employees of the management.

Issue No. (ii) and (iii)

18. It is the case of the claimant union that the principal employer, i.e. management herein has not obtained registration for the purpose of awarding contractors to private contractors as required under Section 7 of the CLRA Act nor the so called contractors were duly licenced in terms of provisions of Section 12 of the CLRA Act. During the course of arguments, it was not disputed that before awarding any contract to a private contractor, the principal employer of the establishment must apply to the appropriate Government for its registration before the registering officer within the prescribed time. The CLRA act also provides the format which should contain necessary particulars of the establishment which is seeking registration under Section 7 of the CLRA Act. Contravention of provisions of Section 7 of the CLRA Act constitutes offence under the law. Similarly, the private contractor is also required to obtain licence and must apply to the appropriate Government by fulfilling all the requisite conditions. Contractor is also required to mention details of the workers who are to be engaged for execution of the work under the principal employer. Primary object is to stop exploitation of contract labour by the contractor or by the establishment.

19. It is pertinent to mention here that the management when filing written statement has not filed certificate of registration as required under provisions of Section 7 of the CLRA Act or the contract documents entered into in terms of Section 12 of the CLRA Act. Even when MW1 Shri Ashwani Kumar Gupta was examined, he was not in a position to explain as to where these documents are. Shri MW2, Shri Babberwal was also examined by the management as MW2. He has also tendered in evidence various documents and certain documents were accepted by the management. This witness has clarified that the contractor used to visit the office of the management. However, he has not specifically named any contractor, year-wise, under whom various workers were working nor he has mentioned names of any official of the contractor in his statement who was supervising work of the claimants herein, who were admittedly working in the premises of the management. However, management was not in a position to produce record relating to the name of the supervisor. He has denied that the contract documents Ex.MW2/29 and Ex.MW2/30 are fabricated documents but he has not explained from where the documents have come when on an earlier occasion, despite directions of the court, the said documents were not produced. To my mind, examination of the contractor while filing these documents was necessary as the contractor is alive and is available for his examination. It is not the case of the management that the contractor is no more in this world or his whereabouts are not known to the management. Law is fairly settled that merely marking of documents as exhibits will not dispense with the proof such documents. Party relying upon such a document is required to prove the same in accordance with law. From where

photocopies of these documents were obtained was not explained by the learned A/R for the management during the course of arguments when originals of none of these documents have been shown to the court. In such a situation, merely placing on record the photocopies during the statement of MW2 by the management cannot be said that the management has duly proved the documents, as required under the law, particularly when there is no examination of the officials who were there at the time of execution of such documents and the contractor who has signed the same. Shri Balbir Singh Babbarwal, MW2 is not signatory to these documents. In view of this, issue No.2 and 3 are decided in favour of the claimant and against the management.

Issue No. (iv)

20. Learned A/R for the management raised the plea that question of sham and bogus agreements cannot be entertained and this Tribunal cannot travel beyond the terms of reference in view of the specific provisions contained in Section 10 of the Act. There is hardly any dispute with the proposition of law that this Tribunal is required to answer the reference made by the appropriate Government. However, all the incidental questions relevant to the main issue which are integral part of the reference are also required to be answered by this Tribunal. Moreover, reference before this Tribunal is not to the effect that whether the claimants herein are employees of some contractor or that of the principal employer, i.e. management herein. The reference is very specific and this Tribunal is required to answer the question whether demand of claimant union regarding termination of the job of the claimants herein by the management is fair and justified.

21. Learned A/R for the management during the course of arguments relied upon a number of authorities so as to support her plea that the claimants herein are employees of the contractor and are not in the employment of the management. In this regard, reliance was placed upon the case of International Airport Authority of India Vs. International Air Cargo Workers Union (2009) 13 SCC 374, General Manager Bengal Nagpur Cotton Mills Vs. Bharat Lal & another, (2011) 1 SCC 635, National Aluminum Company Limited vs. Ananta Kishore Raut & Others (2009) 9 SCC 462, S.C. Chandra Vs State of Jharkhand (2007) 8 SCC 279, Hari Shankar Sharma Vs. Artificial Limbs Manufacturing Corporation (2002) 1 SCC 274, India General Navigation and Railway Company Ltd. vs their Workmen (Civil Appeal No.514 of 1964), NC John Vs. Secretary, Thooupzma Taluk Shop (1973 1 LLJ 366 Kerala High Court), Oshiar Prasad & Others Vs. the Employees in relation to management of Sudamdih Coal Washery of M/s BCCL, Dhanbad, Jharkhand (SLP(C) 33509/2011 decided on 02.02.2015, Oil and Natural Gas Corporation KG Project Rajahmundry Vs. N. Satyanarayan (2003) 3 ALD 711 Andhra High Court(, Dyes and Chemical Workers Union Vs. Bombay Oil Industries Ltd. (2001) 89 FLR 638. Reliance was also placed on a few other authorities related to deposit of EPF, ESI etc. which is not to be considered as relevant or decisive factors for deciding relationship of employer and employee.

22. Learned A/R for the claimants urged that in the present case there is ample evidence on record to suggest that the claimants have been working in the premises of the management for the last more than 15-18 years and having performed their duties sincerely and regularly. Claimants were not in the knowledge that in the record of the management they have been shown to be working under any contractor. It was further urged that in view of the ratio of the case in Steel Authority of India Vs. National Union Water Front Workers (2001) 7 SCC 1 as well as Anoop Sharma Vs Executive Engineer (2010)SCC 5497, management was required to serve notice upon the claimants before terminating their services and retrenchment compensation was also required to be paid to the claimants at the time of their termination.

23. During the course of arguments it was not disputed on behalf of either of the parties that no written notice was served upon the claimants when their services were terminated either by the contractor or by the management nor were they paid any retrenchment compensation as per Section 25-F of the Actbefore their termination. In such circumstances, it is thus clear that there is clear-cut violation provisions of section 25-F of the Act. It is also clear from record of the case that claimants herein are working continuously with the management, may be on papers through contractors for some time and they have completed 240 days in a year prior to their termination. Management has also not adduced any evidence so as to show that they were not directly engaged initially. As discussed above, management in its reply has only mentioned names of M/s Tiwari& Co. and M/s Flora Automobiles who were engaged by the management as contractors. The most relevant period in the present case was when services of the claimants herein were terminated, i.e. 31.03.2002, as to who was the so-called contractor engaged by the management.

24. Hon'ble Apex court in the case of SAIL Court in Steel Authority of India and others Vs. National Union Waterfront Workers and others (2001) 7 SCC 1) was primarily concerned with the meaning of the expression 'appropriate Government' as used in Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970 and in Section 2(a) of the Industrial Disputes Act, 1947 in relation to State Government or the Central government. The other issue involved before the Apex Court was the automatic absorption of contract labour in the establishment of the principal employer as a consequence of abolition notification issued under Section 10A of the CLRA Act 1970. Supreme Court while partly overruling the judgement in Air India Statutory Corporation Vs. United

Labour Union [1997 (9) SCC 377] prospectively held that neither section 10 of the CLRA Act nor any other provisions of the Act, whether expressly or by necessary implication, provides for automatic absorption of the contract labour on issuance of notification under the said section, prohibiting contract labour and consequently principal employer is not required to absorb contract labour working in such establishments. In the said case, another incidental issue whether relationship of master and servant between the principal employer and contract labour emerges after issuance of notification under section 10 of the CLRA Act was also considered by the Court. After discussing the entire spectrum of the case law on the subject in Para 125 of the judgement, it was held as under:

> (3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment;
>
> "(4) We overrule the judgment of this Court in Air India case prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case shall hold good and that the same shall not be set aside, altered of modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final."
>
> (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.
>
> (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

25. A critical examination judgement in SAIL case (supra) would show that this judgement shines like a pole star in the galaxy of precedents in the field of industrial laws and provides a beacon light to all those who are lost in the mist of legal confusion.

26. It is clear from the various judgements that there are a number of factors which are required to be considered in order to determine whether the workmen are directly in the employment of the principal employer, i.e. management herein or were employees of the so-called contractors. One fact which is apparent from the perusal of the entire file is that different contractors have been engaged by the management on paper from time to time but the workmen remained the same despite engagement of different contractors by the management. It is, thus, a sheer case of name-lending by the contractor to the principal employer or company. Admittedly, all the claimants were working in the premises of the management and were doing the work of repair etc., which fact was not disputed by any of the parties. There is no mention of name of any supervisor of any of the contractors who was having any kind of control over the claimants herein. Rather, evidence of the claimants herein is explicit on the point that they were doing work at Shakur Basti installation on the orders of the officials of the management who were getting all kinds of work from them. Onus to prove the contract or agreement between the principal employer and the contractor was on the management and also as to exercise of supervisory or administrative control by the contractor on the employees was very heavy on the management, who has not examined even a single contractor so as to prove any of the contract as well as period of contract, including number of workers to be engaged by such contractor for performance of the work. At this stage, it is also appropriate to refer to the provisions of CLRA Act which clearly provides that no contractor shall undertake or execute any work through contract labour unless Licence has been issued in favour of such contractor by the Licensing Officer in terms of Section 12 of the CLRA Act. Similarly, the principal employer is also required to register itself by making an application to the registering Officer in the prescribed manner so that the principal employer could engage

contractor for execution of the work. Contravention of Section 7 or 12 of the CLRA Act is also an offence under the law. It is further clear from perusal of section 21 of the CLRA Act that the principal employer shall nominate a representative to be present when wages are paid to the workmen and in case contractor fails to make payment of wages, it is the duty of the principal employer to make payment of such wages. Further Rule 72 enjoins upon the principal employer to authorize a representative when salary is paid to the workmen and his signatures are also required to be appended on the register of wages. After payment of salary to the workmen, a copy of the same is required to be sent to the principal employer by the contractor. In the case on hand, the above requirements have not been followed at all by the principal employer as management has not produced the salary record of the claimant right from the beginning when the claimants were working till the date of their termination on 31.03.2002. Management has selectively filed only some of the record pertaining to 2-3 contractors whose names are mentioned in the written statement. Even the said contractors have not been examined so as to prove that it was the contractor who was getting work from the claimants herein in the premises of the management. In such circumstances, merely because payment was made through contractors cannot be said to create relationship of employer and employee between the contractors and the claimants herein.

27. I have carefully gone through the ratio of the authority in International Airport Authority of India Vs. International Air Cargo Workers Union(2009) 13 SCC 374 and a scrutiny of the facts of the above rulings would show that the appellant company, International Airport Authority of India(IAAI) in the said case gave licence to a private contractor for groundling of cargo and the contractor was entitled to collect charges from the consignor and consignee. The said private contractor employed its own workers for ground handling of cargo. When the appellant company (IAAI) terminated the licence of the private contractor. Workers then requested the appellant company (IAAI) to give them employment. appellant company (IAAI) gave them casual employment for some time purely as temporary measure and on humanitarian grounds. Subsequently, the said workers formed a co-operative society to which contract of ground handling was given. The issue before the court was whether the contract between appellant company (IAAI) and the Co-operative society was sham and the workers were direct employees of the appellant company (IAAI). Initially award was passed by the Industrial Adjudicator in favour of the contract workers holding that the contract between the appellant company (IAAI) and the society was sham. However, in writ petition, Single Judge of the High Court quashed the award given by the Industrial Court but the Division Bench of High Court in writ appeal reversed the decision of the Single Judge. It was thereafter that the matter was taken by appellant company (IAAI) before the Hon'ble Apex Court and their plea was allowed by holding that ultimate supervision and control of the handling work in the said case was with the contractor as it is he who decides where an employee is to work and how long he will work, subject to other job conditions. It was the contractor who was assigning and sending workers to work from one place to another. In view of this factual scenario, it was ruled that the contract workers were employees of the contractor and not that of the appellant company (IAAI). The factual situation in the case on hand is entirely different from the factual scenario discussed above as in the case on hand there is ample evidence on record to suggest that the claimant here were doing /performing work at Shakur Basti installation under the direct supervision and control of the officials of the management and this fact is amply clear even from the statement of the witnesses examined by the management as well as other evidence on record. There is not even an iota of evidence on record to suggest as to any contractor or his supervisor had ever visited premises of the management so as to give directions to the claimants, who were admittedly doing work in the premises of the management. Management has also not examined, as discussed above, any contractor or any supervisor who was engaged by such contractors so as to prove the factum of ultimate supervision and control of the work on the claimants, as such, ration of this authority is not of any help to the case of the management. Moreover, in the authority relied upon by the management there is ample evidence on record to suggest that it was the contractor who was exercising every kind of control over the contract workers and adhoc employment was given to the said workers of the said contractor on humanitarian grounds for a short period. In the above authority, i.e International Airport Authority of India vs. International Air Cargo Workers Union [AIR (2009) SC 3063], it was held as under:

> "When the contract labour contends that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employees."

28. Similarly, ratio of the judgement in General Manager Bengal Nagpur Cotton Mills Vs. Bharat Lal & another, (2011) 1 SCC 635 is also not of any help to the management. In the said case, as is clear from the fats, respondent was engaged through contractor as security guard for duties at the appellant mill in December 1980 and services of such contract guard was terminated in July 1982 as the appellant mill terminated services agreement with such contractor on 16.08.1982. The contract worker, after five years of this termination filed a dispute for declaring that his termination

from service is illegal and he be given all consequential relief. Labour Court partly allowed the plea of the workman and directed the principal employer to reinstate the contract worker to his post and pay him arrears. Thereafter, the principal employer went in appeal before the Hon'ble High Court wherein the employer was directed to pay full wages during pendency of the appeal to the contract worker. It so happened thereafter that the mill of the principal employer was closed in October 1992 as it was declared a sick unit. It was also held by the Industrial Court that the agreement between the principal employer and the private contractor was sham and nominal. High Court had also dismissed the appeal filed by the principal employer and the matter finally reached Hon'ble Apex Court wherein appeal filed by the principal was allowed and order of the Industrial Court and High Court was set aside. In the said case, Hon'ble Apex Court laid down two basic tests in order to determine whether contract in the given case is sham and nominal and in para 10 of the judgement, it was observed that the Industrial Court is required to keep in mind the well-recognized tests to find out whether the contract labour are the direct employees of the principal employer are (i)whether the principal employer pays the salary instead of the contractor; and(ii) whether the principal employer controls and supervises the work of the employee. The Industrial Court in the case decided the case in favour of the contract employees. However, Hon'ble Apex Court observed that the Industrial Court committed a serious error in arriving at the said conclusion as onus was wrongly placed upon the management to prove the material issue of contract being sham and nominal. It was also found by the Apex Court that the contract worker has misrepresented facts that he was not in employment after termination whereas on record employment certificate of the contract worker was filed by the company, which was not even denied by the contract worker. It was on account of this reason that due to deliberate suppression and misrepresentation of facts, contract labour was held not entitled for reinstatement, including payment of back wages.

29. Strong reliance was also placed by the management in the case of National Aluminum Company Limited Vs. Ananta Kishore Raut & Others (2009) 9 SCC 462. It was a case where NALCO had established various schools and provided infrastructure as well as financial support to the said schools. Management Committee of the Schools were constituted to run administration of school, including engagement of staff etc. It was the Management Committed which recruited staff and all decisions regarding their service conditions was taken by the said managing committee without any control or approval from NALCO. Later on, administration of the school was given to some other society on the decision of the Management Committee. The school has made recruitment of various staff and later on terms of the same agreement expired, resulting in retrenchment of the employees. Ultimately, question which arose for consideration was whether the said employees are in the employment of the Management Committee of the School or that of NALCO. It was held that there was no supervisory control over working of the staff or canteen of NALCO and everything was being done by the managing committee of the school. Day to day supervision and control is vested with the managing committee from appointment till termination of the workers.

30. I really fail to understand as to how this ruling is helpful to the case of the management when evidence of the management is to the contrary and the management has not examined any contractor or its supervisors so as to show, as discussed above, that any direct supervision or control was exercised by such contractor or supervisor on the spot upon the claimants. Shri Balwinder Singh Babberwal, MW2 has admitted in his cross examination that the claimants were working in the premises of the management from 1985 till 2002 under different contractors. They were doing the work of maintenance and repairing of company vehicles, which was upto the mark. Though he has denied that the claimants were directly employed by the management. However, he has not mentioned name of any contractor to whom work was given in the year 1985. There is no document of the management on record to show that in the year 1985 or immediately thereafter as to who was the contractor engaged by the management for doing such work. Rather, this witness as well as MW1 Shri Ashwani Kumar have stated that contract documents are not available with the management as the same could not be traced despite best efforts. Later on, Shri Babbarwal, in his cross examination dated 04.06.2013 produced agreements Ex.MW2/W29 to Ex.MW2/W30. He has further admitted that there are no signatures of the contractor on these documents. Underneath the signature of the witnesses, his parentage and address have not been mentioned. Further, photocopy of non judicial stamp paper on which Ex.MW2/W29 and Ex.MW2/W30 does not project the contents on the reverse of the stamp paper. Therefore, mere placing of photocopies of these documents on record without examination of the persons who have prepared and signed such documents is not of any help to the case of the management.

31. Reliance was also placed upon the case of S.C. Chandra Vs State of Jharkhand (2007) 8 SCC 279. In this case, the issue of employer and employee relationship was involved. In fact, the issue before this Court was for parity of wages and question of agreement/contract being sham or nominal was not directly involved; It was further held in this case that simply because nature of the work was same would not entitled the employee for equal pay with the other employees whose mode of employment, experience etc. is different. The employer of Subhash Chander was not being maintained by BCCL in any manner, as such, it was held that they are employees of the School.

32. I have also gone through the judgement in Hari Shankar Sharma Vs. Artificial Limbs Manufacturing Corporation (2002) 1 SCC 274. To my mind, the factual scenario in the said case depicts entirely a different picture

from the controversy on hand. In the said case, the company owned a factory where more than 200 workers were employed and a canteen was set up on the premises for the employees. From time to time agreements were into between the contractor of the company and it was the contractors who were preparing and serving foodstuff. Workmen claimed themselves to be direct employees of the company and sought regularization. When they failed before the Labour Court, matter was taken by the workers of the canteen before the Apex Court and in this case reference was made to Section 46 of the Factory Act, 1947 in which a company is cast with statutory obligation to provide and maintain a canteen for the use of its employees. It was against this background that held that setting up of the canteen by the company was a statutory requirement and employer of the canteen cannot be said to be employer of the management. Again, as discussed above, control regarding mode of work and nature of duty in the case relied upon was with the manager of the canteen and the principal employer has nothing to do with the same, whereas in the case on hand, everything is vice versa as it was the management who is having full effective control over the employees, i.e the claimants herein who were performing and taking vehicles for filling, repair etc. to various places as is clear from the documents discussed above. Resultantly, ratio of this authority is also is not of any help to the case of the management.

33. In India General Navigation and Railway Company Ltd. vs their Workmen (Civil Appeal No.514 of 1964), it was case of termination of 56 workers who alleged themselves to be in the direct employment of the company whereas the case of the management was that they were not its employees and termination of their services was a result of closure of the business and the said closure was held to be bonafide by the Tribunal. It was also held that there was no direct relationship of master and servant between the company and the workers.

34. Learned A/R for the management also relied upon certain other authorities regarding regularization of the workmen. There is no dispute to the proposition of law that there cannot be regularization of daily wage workers unless there is policy of the management to regularize such workmen. Moreover, question of regularization would arise only when termination of the workmen is held to be bad under the law or such workmen are ordered to be reinstated.

35. The learned A/R for the claimant also relied upon a number of authorities so as to prove that there is gross violation of provisions of Section 25-F of the Act as well as other provisions. In this regard, strong reliance was placed on the case of Anoop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana), reported in (2010) 5 SCC 497 has discussed in detail provisions of Section 25F of the Act and held as under:

> 25-F Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months
>
> 16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.
>
> 17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity

36. Reliance was also placed by the learned A/R for the claimant upon the case of Secretary, Haryana State Electricity Board vs. Suresh Kumar (1999) LLR 433). In this case, Electricity Board has awarded contracts to private contractors to undertake work of maintenance and cleaning of plants at various places in the State. When the said contract expired, services of the contract employees were terminated by the contractor and the matter was taken to the Industrial Court. Labour Court ordered reinstatement with continuity of service to the said contract employees alongwith 10% back wages. When matter was taken to the Hon'ble High Court by the management of Electricity Board, it was held that there existed relationship of employer and employee between the Electricity Board and the karamcharis (contract employees). As such, to this extent order of the Labour Court was upheld. However, no back wages were granted. It was held by the Hon'ble High Court that maintenance of plant is not seasonal work in nature and overall control over such contract labour was that of the officials of Electricity Board who were issuing necessary directions to such employees from time to time and were also exercising administrative control. Electricity Board

finally took up the matter with Hon'ble Apex Court wherein strong plea was raised that karamcharis were employees of the contractor and not that of Electricity Board inasmuch as wages were being paid to the said employees through the contractor. It was proved on record that the employees in the above case were in continuous employment though private contractors kept on changing from time to time. In this background, it was observed by the Hon'ble Apex Court that doctrine of lifting of veil as enunciated in the case of Solomon vs. Solomon can be applied to decide the relationship of employer and employee in cases falling under contract labour. It was also held that the work of maintenance cannot by any stretch of reasoning be ascribed to be of seasonal nature. The number of employees required for maintenance and upkeeping of the plants are also mentioned in the contract. Finally, in para 19, Hon'ble Apex Court, held as under:

> It has to be kept in view that this is not a case in which it is found that there was any genuine contract labour system prevailing with the Board. If it was a genuine contract system, then obviously, it had to be abolished as per Section 10 of the Contract Labour Regulation and Abolition Act after following the procedure laid down therein. However, on the facts of the present case, it was found by the Labour Court and as confirmed by the High Court that the so called contractor Kashmir Singh was a **mere name lender** and had procured labour for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. The Labour Court also noted that the Management witness Shri A.K. Chaudhary also could not tell whether Shri Kahsmir Singh was a licensed contractor or not. That workmen had made a statement that Shri Kashmir Singh was not a licensed contractor. Under these circumstances, it has to be held that factually there was no genuine contract system prevailing at the relevant time wherein the Board could have acted as only the principal employer and Kashmir Singh as a licensed contractor employing labour on his own account. It is also pertinent to note that nothing was brought on record to indicate that even the Board at the relevant time, was registered as principal employer under the Contract Labour Regulation and Abolition Act. Once the Board was not a principal employer and the so called contractor Kashmir Singh was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that the so called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board, on the one hand, and the employees, on the other, could be clearly visualized."

37. In the case on hand also, as is clear from evidence on record that the claimants herein are virtually in continuous employment since 1985/86 onwards and they are performing their duties in the premises of the management since then. Management has not examined, as discussed above, any contractor or supervisor engaged by such contractors so as to show that supervisory and administrative control over the said claimants was that of the contractor and not that of the management. Rather, evidence on record is very explicit to the effect that duties are being assigned to different claimants by the officials of the management regarding filling of diesel as well as other duties regarding repair and maintenance of vehicles. There is not even a shred of evidence on record to show that any contractor or his supervisor had at any point of time issued any kind of direction regarding performance of duties in the premises of the management where such employees were admittedly working in various shifts. There is also no specific evidence on record to prove as to who was the last contractor engaged by the principal employer, i.e. management herein to whom work was assigned by the management by executing valid contract. Moreover under what circumstances termination of services of the claimant on 31.03.2002 was done either by such contractor or the management? All this was within the knowledge of the management who is admittedly the principal employer and management should have submitted entire record pertaining to engagement of such contractors from time to time. There also appears to be violation of provisions of CLRA Act by the management. It is clear from provisions of the CLRA Act and rules made therein that whenever a contract is entered into between the parties, the number of workers to be engaged with their full names and details is also required to be mentioned in the contract documents. It is further the duty of the principal employer to ensure that wages are paid to such employees on the spot by the contract as is clear from Rule 72 of Contract Labour (Central) Rules 1971. The principal employer is also required to ensure compliance of other provisions of CLRA Act as well as rules made therein. There is also an obligation upon the management to maintain register of contractors in terms of Rule 74 in Form XII and form XIII requires every contractor to append names of the employees engaged by him. Since in the case on hand, employees, i.e. claimants herein, remained the same though contractors kept on changing from time to time, which fact was not disputed even by the management, it is clearly suggestive of the fact that such contractors were simply name lenders and they were not having any effective or supervisory control over the employees on the spot. Since, no contractor has been examined by the management, as such merely filing of contract documents which do not even contain signatures of the contractors is not of much value. In such circumstances, this Tribunal is of the firm view that the claimants herein cannot be said to be employees of the contractor as was being strongly urged on behalf of the management and they are held to be employees of the principal employer.

38. Admittedly, in the case on hand, there is blatant violation of provisions of Section 25-F of the Act and there is a long line of decisions of Hon'ble Apex Court that non-compliance of provisions of section 25-F of the Act would render action of the management to be totally illegal and void under the law.

39. Now, the residual question before this Tribunal is as to what relief the claimants herein are entitled to? Since this Tribunal has already held that the above claimants were in employment of the management since 1985 onwards and they were also performing their duties continuously and as such, it cannot be said that the work which they were performing is seasonal or temporary in nature.

40. No doubt, earlier a view was articulated by the Hon'ble Apex Court in several authorities and legal position was that if termination of a workman is found to be illegal or against the principles of natural justice, in that eventuality, relief of reinstatement with back was would follow. This view was taken by Hon'ble Apex Court in Deepali Gundu Survase Vs. Kranti Junior Adhyapak Mahavidyalaya (2013 AIR SCW 5330). However, in the recent past, there is change in this trend and now in several cases a view has been taken that relief by way of reinstatement alongwith back wages is not automatic even though the action of the management has been found to be totally illegal or void under the law. Question of grant of back wages as well as reinstatement, in fact, would depend upon a number of factors, e.g. nature of post, mode of recruitment, duration of engagement, delay in raising the industrial dispute, nature of the work being performed by the workman etc. However, there cannot be any straight jacket formula to be applied in a mechanical manner by the courts.

41. At this stage, it is necessary to mention that in Oshiar Prasad Vs. Sudamdih Coal Washery (2015) 4 SCC 71, Hon'ble Apex Court while dealing with almost similar case held that when services of a workman have been terminated long back prior to making of the reference and such workmen were either not in the services of either Contractor or/and the previous employer, in that eventuality, question of their absorption or regularization did not arise nor this issue could have been gone into on its merits for the reason that they were not in service. Question of regularization thus can only be considered when contract of employment subsists. In the case on hand, as is clear from the pleadings as well as evidence on record, services of the claimants herein were terminated on 31.03.2002 and thereafter they are virtually out of employment and evidence on record is quite clear that they have been in service of the management for the last more than 15-18 years prior to their termination. In view of this, reference is answered accordingly, partly in favour of the claimant holding that instead of reinstatement or regularization of their services, they are entitled for reasonable compensation. Having regard to the length of their service and the latest trend of the Hon'ble Apex Court reflected in the various judgements, I am of the view that an amount of Rs.5 lakh appears to be just and reasonable. It is also made clear that in case any of the claimant/s expired during pendency of the proceedings before this court, in that eventuality, compensation would be paid to the legal heirs of such deceased claimant/s. In case compensation of Rs.5 lakh is not paid within a period of one month from the date of publication of the award, the claimants would also be entitled to interest at the rate of 9% per annum upon the said amount from the date of the reference till its payment. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 15, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2017

का.आ. 2903.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 156/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2017 को प्राप्त हुआ था।

[सं. एल-30011/20/2003-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th December, 2017

S.O. 2903.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 156/2011) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Limited and their workman, which was received by the Central Government on 30.11.2017.

[No. L-30011/20/2003-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1 : ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI

ID No. 156/2011

The Secretary,
Petroleum Worker Union,
C-160, Sarvodaya Enclave,
New Delhi – 110 017 …Workman

Versus

The General Manager,
Hindustan Petroleum Corporation,
11th Floor, Tower I, 124, Indira Chowk,
New Delhi 110 001 …Management

AWARD

Pursuant to receipt of reference vide letter No.L-30011/20/2003-IR(M) dated 19.06.2003 clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act), this court is required to adjudicate an industrial dispute, terms of which are as under:

> 'Whether the demand of the Union that Shri Balwinder Singh and seven others (list enclosed) for reinstatement /regularization in view of the notification dated 10.05.2002 of the Ministry of Labour, New Delhi is justified? If yes, to what relief the workmen are entitled?'

2. Later on, corrigendum was received from the appropriate Government vide letter No.L-30011/20/2003 dated 27.05.2014, which is as under:

> 'In partial modification of this Ministry's reference order of even number dated 19.06.2003, in the second line of the schedule, the words 'in view of termination with effect from 31.03.2002 without following the provisions of ID Act, 1947 and consequent' may be treated as added between the words 'reinstatement' and 'regularization'.

3. Both parties were put to notice and it is clear from statement of claim filed by the claimant that the claimants, namely S/Shri Balwinder Singh, Roshan Lal, Satish Kumar, Badri Prasad, Jai Singh, Madho Singh, Baru Ram and Shri Vidya Bhushan were employed by Hindustan Petroleum Corporation Ltd. (in short the management) in Shakur Basti installation, New Rohtak road, except Shri Baru Ram, who has been working Brijwasan tap off point. Later on, Shri Vidya Bhushan was also shifted to Corporation tap off point at Brijwasan. All the claimants herein are members of Petroleum Workers Union, New Delhi since 1985-86. This is a registered trade union and is duly recognized by the management.

4. It is the case of the claimants that they were engaged as contract labour in the Corporation and the work carried out by them was permanent and perennial in nature and even served the management directly for 15-18 years. They are being continued as contract labour. The sole objection of the management is of earning higher profits at the cost and exploitation of the workmen. Claimants are in great stress and strain and there is constant danger of termination of services by the management as Ministry of Labour is in the process of issuing prohibition notification of contract labour under the law. Contractor neither had requisite licence which is violation of Section 12 of the Contract Labour (Regulation and abolition) Act(in short the CLRA Act nor the management has got valid registration under Section 7 of the CLRA Act for engaging contract labour. There is also reference to the CLRA Act in the pleadings, particularly Section 21 and 29 of the said Act.

5. It is specifically alleged in Para 12 of the claim that under Section 10 of the CLRA Act, Central Government has issued prohibition notification dated 10.05.2002 and above notification prohibits employment of contract labour in the process, operation of work of maintenance of vehicles and equipment, namely truck, jeep, DG set, fire engine in the establishment of the management at Shakur Basti installation. Nature of work performed by the claimant is permanent and perennial in nature and the claimants have been working with the management without any break for the last 16-17 years. Main livelihood of the claimants is totally dependent on the present work and they have long experience of work with the management. There is also reference to the judgement of the Hon'ble Apex Court in para 14 of the claimant in Haryana State Electricity Board Vs Suresh and others (1999) 3 SCC 601) wherein the Tribunal/Court could lift the veil so as to ascertain the true or genuine nature of the contract.

6. It is also the case of the claimant that they have earlier filed writ petition 2001 of 2000 with the Hon'ble High Court of Delhi for continuation of their service. In the said writ petition, Contract Labour Court was directed by the Hon'ble High Court to decide the reference filed by the contract labour. Thereafter the Contract Labour Board in its meeting on 30.01.2001 decided to recommend to the Government to abolish contract labour system in the bob of maintenance of vehicle and equipment etc. at Shakur Basti installation of the management. It was thereafter that necessary notification dated 10.05.2002 for prohibition of contract labour in the managements installation was issued. Claimants have also made reference to the judgement of the Hon'ble Apex court in the case of Steel Authority of India Vs. National Waterfront Workers Union wherein Hon'ble Apex Court has dealt with the question of issuance of prohibition notification under Section 10 of the CLRA Act. It is further alleged that the management who is the principal employer has violated the prohibition notification issued by the central Government by engaging new contract labour and terminating services of the claimants herein i.e. Shri Baru Ram & Shri Vidya Bhushan on 31.01.2002, Shri Balwinder Singh, Shri Roshan Lal, Shri Satish Kumar and Shri Badri Prasad, Shri Jai Singh and Shri Madho Singh on 31.03.2002 , is arbitrary, illegal and in violation of Section 25-F, G, M and N of the Act. It is also prayed that the claimants have been serving the management for the last 14-17 years, as such, their services are liable to be reinstated.

7. Management has demurred the claim of the claimants by filing written statement. Management has taken preliminary objections that the present reference is barred by doctrine of estoppel as all demands of the union for reinstatement/regularization cannot be considered. It is also alleged that the appropriate Government issued notification on 20.04.1987 whereby it had abolished contract labour system in certain processes at terminal, plant, depots and factories of the management. There is also reference to the writ petition filed in Hon'ble High Court challenging the said notification. Subsequently, the union has entered into agreement with the management on 09.03.1984 whereby all the matters and disputes pertaining to contract workmen engaged by the Society in the installation at Shakur Basti were settled. Again there was an agreement between the management and the union on 28.06.2001 which was valid for a period of 10 years commencing from 01.10.1998. It is mentioned in the said agreement that settlement is in full and final settlement of the demands raised by the union. Now, the union cannot raise this point by filing the present claim before this Tribunal. Union has also not approached this Tribunal with clean hands. There is also no proper espousal and making of reference by the appropriate Government is stated to be without application of mind. Thus, it is abuse of process of court. Claim is also bad for mis-joinder and non-joinder of necessary parties. It is the case of the claimants that they were in the employment of Tiwari and Co. and Floria Automobiles. It is also their case that their respective contactors/employers who have employed the claimants had terminated their services. However, claimants are claiming reinstatement with the management who had not terminated services of the claimants. On merits, all the material averments have been denied by the management. However, in reply in Para 1 (ii)a) it is submitted that the claimants had worked only upto 31.03.2002 when it was decided by the management that no fresh contract for repair/maintenance at Shakur Basti installation. It is denied that the claimants were working for maintenance of vehicles of the management. It is also denied that the claimants were continuously and regularly for more than 240 days in each completed year of service from 1984 to 2002. It is also denied that the work performed by the claimants is permanent and perennial in nature. It is denied that the claimants were employed as casual workers for carrying work of permanent and perennial in nature. It is also denied that the claimants were performing their duties under the direct control and supervision of the officials of the management. Further, it is denied that the contractor did not have requisite licence under Section 12 of the CLRA Act or the management does not have valid license under Section 7 of the said Act. It is also denied that the management is violated the notification and continues to employ new contract labour.

8. Rejoinder was also filed by the claimant to the written statement filed by the management wherein the claimants have reiterated the stand taken in their claim statement and denied material averments contained in the written statement.

9. Against this factual background, my learned predecessor based on the pleadings of the parties, vide order dated 19.05.2005 framed the following issues:

(i) Whether the claim filed by the union and the consequent terms of reference are barred by doctrine of estoppel as stated in preliminary objection No.1 of the written statement?

(ii) Whether the claim filed by the union is barred by principles of resjudicata?

(iii) Whether the union is authorized to raise demands on behalf of the claimants who are not its members?

(iv) Whether there is any employer-employee relationship between the parties? If so, its effects?

(v) As per terms of reference

10. Claimant, in order to prove their case examined S/Shri Balwinder Singh, Baru Ram, Madho Singh, Roshan Lal, Satish Kumar, Badri Prasad, Jai Singh, Vidya Bhushan and K.L. Chhabra, whose affidavits are Ex.WW1/A,

Ex.WW2/A, Ex.WW3/A, Ex.WW4/A,Ex.WW5/A, Ex.WW6/A, Ex.WW7/A, Ex.WW8/A, Ex.WW9/A respectively and they relied on various documents. Management, in order to rebut the case of the claimants examined Shri Ashwani Kumar Gupta and Shri Balbir Singh Bahherwal as MW1 and MW2 and their affidavits are Ex.MW1/A and Ex.MW2/A respectively. Various document were relied by the management witness and many adjournments wee also taken by the management for production of the documents during the course of cross examination, which was allowed by this Tribunal in the interest of justice.

11. I have heard Shri K.L. Chhabra, A/R for the claimants and Ms.Raavi Birbal, A/R for the management.

Issue No. i and ii

12. Both these issues are being taken together for the purpose of discussion as they are inter-related and can be conveniently disposed of. No doubt management has taken the plea of estoppel in Para 1 of preliminary objections of the written statement and there is also mention of the fact that the present reference is barred by principles of resjudicata. During the course of arguments, attention of the Tribunal was invited by the learned A/R for the management to settlement dated 09.03.1994 Ex.MW1/1. Learned A/R for the management also urged that the said agreement was valid for a period of 10 years commencing from 01.10.1998 to 30.08.2008. The said settlement is full and final between the parties and the demands raised by the union were considered and settled between the parties. Demands which were not specifically mentioned in the above settlement will be treated as not pressed by the union and will not be raised by the union during operation period of this settlement.

13. Shri K.L. Chhabra, appearing on behalf of the claimant urged that so called settlement ExMW1/1 has nothing to do with the reference which has been made by the appropriate Government and the said settlement has nothing to do with the illegal termination of the claimants herein Moreover, issue raised in the present reference are not at all covered, in the contention of the A/R for the claimant, by terms and conditions contained in the settlement Ex.MW1/1.

14. I have also gone through the contents of the settlement Ex.MW1/1 and a bare perusal of the various clauses of the above settlement would show that the issues raised in the said mutual settlement between the union and the management were entirely different from the controversy which has been raised in the present reference. When the above settlement was arrived at between the parties, writ petition was already pending in the Hon'ble High Court of Delhi and it appears that in view of the above agreement, no order on merit was passed by the Hon'ble High Court of Delhi.

15. Since reference made to this Tribunal is regarding reinstatement/ regularization of the services of the claimant in view of the notification dated 10.05.2002 and claimants have also challenged their termination to be wrong and illegal, as such, this Tribunal is of the considered opinion that settlement Ex.MW1/1 between the management and the claimant is not a bar for the entertainment and disposal of the reference made by the appropriate Government. It is trite law that when a reference has been made by the appropriate Government under Section 10 of the Act, the Tribunal is required to pass an award in terms of section 15 of the Act, on merits.

16. Moreover, the plea of resjudicata was not seriously pressed by the learned A/R for the management. Further, there is no adjudication of the claim on merits regarding regularization/reinstatement of the claimants herein in view of their termination on 31.03.2002 by a court of competent jurisdiction or Industrial Tribunal previously. Law is fairly settled that in order to attract the plea of resjudicata, the court has to keep in mind that before claim can be allowed to be barred by principles of resjudicata, it must be shown that plea in question has not only been pleaded but it has been heard and finally decided in the previous case by court of competent jurisdiction and between the same parties. The party raising such a plea is also to not only to prove that the cause of the claimant in the earlier case was the same but also claimants had opportunity to seek such relief in the earlier proceedings. Since the question of reinstatement or termination of the claimants herein has not been earlier considered by a court of competent jurisdiction or Tribunal nor there is any mention of present dispute in any proceedings between the parties. Therefore, there is no question of barring of the claimants herein on the basis of plea of estoppels or resjudicata. Both these issues are decided accordingly in favour of the claimants and against the managements.

Issue No. iii

17. Learned A/R for the management has not specifically pleaded that the union is not authorized to raise demand of the claimants herein. Shri K.L. Chhabra, while appearing as WW9 has tendered in evidence his affidavit Ex.WW9/A. He has specifically mentioned in para 1 that he is Secretary of the Petroleum Workers Union and the said union is duly recognized by the management. He is also signatory to the various settlements, including settlement Ex.MW1/1 wherein his designation is mentioned as Secretary There is also copy of membership/subscription slip which bears signatures of Shri K.L. Chhabra and the fees have been charged from the various workmen as membership fee/subscription. Since Shri K.L. Chhabra, in the capacity of Secretary of the workman union has signed memorandum of settlement on the last page of E.MW1/1 and another settlement Ex.MW2/W1 dated 27.02.1982 and the said settlement is also duly signed by the officials of the management, which also clearly shows that Shri K.L.

Chhabra was duly accepted by the officials of the management as General Secretary of the Union. Moreover, this objection that the claimants were not members of the union of which Shri K.L. Chhabra is General Secretary was not put to Shri K.L. Chhabra seriously before the Assistant Labour Commissioner.

18. So far as question of raising of demand by the claimants herein in its meeting is concerned, there are even rulings to this effect that members of a union, whether registered or unregistered, can also raise a demand orally and there is no need or requirement under the law to specifically raise any demand in writing by the aggrieved workmen. Hon'ble Apex Court in the case of Associated Cement Company Ltd vs. [AIR (1960) SCC 777] held as under:

> 'We have already noticed that an industrial dispute can be raised by a group of workmen or by a union even though neither of them represent the majority of the workmen concerned; in other words, the majority rule on which the appellant's construction of Section 19(6) is based is inapplicable in the matter of the reference under Section 10 of the Act. Even a minority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred or adjudication under Section 20.'

19. In view of the ratio of the judgement discussed above, it is clear that espousal of a dispute by the union is not sine qua non for adjudication of such dispute in terms of Section 10 of the Act. It is, further, clear from the above judgement that even the union is not required to be registered so as to raise a dispute of the workmen under the law. Accordingly, this issue is decided accordingly.

Issue No. (iv) and (v)

20. Both these issues are also being taken up together for the purpose of discussion as they can also be conveniently disposed of. It is clear from the pleadings of the parties that the claimants herein have come with the specific plea that they were employed by the management of HPCL at Shakur Basti for the last 15 to 18 years and they are members of Petroleum Workers Union since 1985-86. Management has come with the specific stand that the claimants had worked with the management only upto 31.03.2002 as is clear from para 2(a) of the written statement when it was decided by the management that no fresh contract for repair and maintenance of vehicles were to be given at Shakur Basti and Brijwasan installation. In para 6 of the preliminary objections, management has also stated that the claimants in fact were in the employment of M/s Tiwari & Co and M/s Floria Automobiles and the claimants were terminated by the said contractor. Management has not terminated services of the claimant, hence there is no question of their reinstatement /regularization by the management.

21. It is clear from the pleadings of the parties that the claimants were admittedly working at Shakur Basti and they have been performing duties for the management. Claimants in order to prove relationship of employer and employee examined Shri K.L. Chhabra, General Secretary as WW9, who has filed a detailed affidavit. It is clear from affidavit of Shri K.L. Chhabra Ex.WW9/A that management has engaged services of 8 claimants for maintenance and repair of vehicles, whose details are also mentioned in the affidavit. During the course of arguments, it was not denied that previously the claimants were doing the work of repair and maintenance of vehicles at Shakur Basti depot. Case if the management, as discussed above, is that it was being done through contractors to whom management has awarded work as per law. There is hardly anything in the cross examination of Shri K.L. Chhabra WW9 so as to help the case of the management in any manner. Similarly, affidavit of other claimants Ex.WW1 to Ex/WW1/8, S/Shri S/Shri Balwinder Singh, Roshan Lal, Satish Kumar, Badri Prasad, Jai Singh, Madho Singh, Baru Ram and Shri Vidya Bhushan also show that they were engaged for maintenance and repair of vehicles belonging to the management. One of the workman is a auto electrical, two were mechanics, 2 were helper, one a foreman. All the claimants have clarified in their affidavits that have been shown to be working under various contractors. However, the management had direct control and supervision and directions regarding performance of work was being done by officials of the management. Management has also allotted code number fo the workmen and ESI cards have also been issued to the claimants wherein the name of HPCL is mentioned. There is also mention of the fact that the management has been changing contractors since 1984-85. Services of the claimants herein always remained continuous with the management. Affidavit further shows that the **contractors were only name lenders** and used to come only when making payment of wages at the close of the month. There are also averments to the effect in para 8 of the affidavit of the claimants that the contractors were not holding licence nor management got itself registered under the CLRA Act. Affidavits of the various workmen contain one vital fact and the same is that they are working with the management since 1985-86 onwards.

22. There is also evidence on record to show that entry passes bear the headnote of BPCL, regarding which there is mention in the affidavit also. During the course of arguments, learned A/R for the management in all fairness, admitted that such passes are issued in a routine manner so that the workman who are working under the contractor can be given entry into the premises of the establishment.

23. There are also copies of ESI card issued by the management and the same is Ex.WW4./1(colly) which shows that under the ESI scheme, cards were issued to the various claimants. Ex.MW1/W2 are copies of EPF slips, which

shows that EPF was being deducted from the wages of the claimants under the provisions of EPF Act 1995. Copy of entry passes are Ex.WW4/3(colly) which bears the name of HPCL in the headnote and have been issued in the name of Balvinder Singh, Satish Kumar, Jai Singh, Babu Ram, Vidya Bhushan.

24. Management in order to rebut the case of the claimant examined Shri Ashwani Kumar Gupta as MW1 whose affidavit is Ex.MW1/A and he has stated in his deposition that the claimants herein were working under various contractors for the management and he was supplied this information by the officials of the department and he is making statement on the basis of official record. Claimants were terminated by the contractor. He was specifically put a question whether he can produce copy of the agreement between the management and the contractor through which claimants herein are alleged to be engaged and the contractor under whose contract the claimants were working. He sought time to produce the said record which was granted by this court. On the next date of hearing, he has produced only one copy Ex.MW1/W1 and he sought further time so as to examine the same. When this witness appeared again on 29.12.2011, he deposed that he had tried to trace the record but could not lay his hands on any other contract/agreement entered into between the management and the contractor. He has not even brought the list of contractors or the registration certificates issued in favour of the management. Though he has made mention of Tiwari & Co. and M/s. Flora Automobiles, their licences were not admittedly produced by him. Though, he said that Ex.MW1/W2 to Ex.MW1/W52 are disputed but he has not deposed as to how these documents can be said to be doubtful. Rather, learned A/R for the management at the time of final arguments filed additional documents to show that it was through contractor EPF was being deducted from the wages of the claimant. However, these documents have been admitted by the learned A/R for the management. There is no mention of the name of any contractor in the above documents which again clearly suggests that EPF of the claimants concerned were being deducted directly by the management. Payment of EPF pertains to the year 1991-92 and onwards.

25. Shri Ashwani Kumar Gupta, in his cross-examination, has also admitted that the management used to deduct PF out of the wages of employer of the claimant. A/R for the claimant also specifically asked this witness to submit list of employees from whose wages PF was being deducted by the management and this witness has simply replied that since the record is very old, as such, he requires more time to peruse the record. Thereafter, this witness was examined by this court on 16.07.2012 and he straightway deposed before this Court that no record as desired by the court was available. He further clarified that as principal employer, management ensures that PF subscriptions were deducted by the contractor from the wages of the employees and this subscription alongwith managements contribution were deposited with the authority concerned. He further stated that original Ex.MW1/1 to Ex.MW1//8 are not available. He further stated that the PF and ESI contribution of the claimants were paid by the management in the capacity of principal employer. Then the management used to deduct the ESI and PF contribution of the employees out of the bill of the contractor. He could not produce any document to show that the above contribution was deducted out of the bill of the contractor. It is pertinent to note here that there is no mention of the name of the contractor in the documents referred above. Lastly, this witness admitted that the management cannot produce copy of any agreement executed between the management and the contractor as no record is available to this effect. He further admitted that the management cannot produce any record to show that the claimants have not worked for more than 240 days in a calendar year.

26. Shri Balbir Singh Babberwal was examined as MW2 whose affidavit is Ex.MW2/A. It is almost on the same lines as the affidavit of MW1. Cross-examination of this witness would show that he is stated that work awarded to the contractor was not for supply of manpower but it was for doing a specific job. He further made a vital admission that the claimant worked in the premises of the management from 1985 till 2002 under different contractors. Work of maintenance and repair of company vehicles was being done by the claimants under their supervision and the same was up to the mark. This witness tried to depose that all the claimants were employed through contractors and are not engaged by the management directly. However, he has not referred to any specific agreement nor any name of the supervisor given as to who was supervising the work being done in the premises of the management by the claimant. He further deposed that there were 60 tankers and lorries owned by the management. He has not disputed document Ex.MW2/W2 which pertain to the provident fund contribution of the various claimants. Even otherwise, these documents have been admitted by the management. He has also produced copies of contracts/agreements Ex.MW2/W2 to Ex.MW2/W5 but he has admitted that these copies do not pear signatures of the contractor. He further deposed that original of the above documents are not in possession of the management. Ex.MW2/W2 is the duty roster of drivers which shows that with the vehicle, names of helpers are also mentioned.

27. It is clear from the resume of evidence discussed above that the management has come with the specific plea that the members of the claimant union are workmen of the contractor and not that of the principal employer whereas the case of the claimants herein throughout is that they have been directly working in the employment of the management who was having supervisory as well as administrative control over the performance of their work. Admittedly, in the case on hand, neither the claimants nor the management had examined the contractors to whom the work was allotted by the management from time to time. There is mention of a few contractors in the pleadings of the

parties and perusal of licence Ex.MW2/5 and certificate of registration Ex.MW2/12 shows that on 11.03.1999 certificate of registration was issued. However, the certificate of registration does not bear the name of the contractor as the same is mentioned in Annexure B. There is another document Ex.MW2/13 wherein there is mention of particulars of the contractors and the contract labour working at Shakur Basti installation. It is further clear from perusal of the said document that the name of the contractor M/s. Tiwari and Co, Om Builders, MP Sambi and Sons alongwith their addresses are mentioned. The said document also mentions the period which is up to the year 2000. There are also similar other documents Ex.MW2/14 to Ex.MW2/17 wherein the principal employer has been shown as Hindustan Petroleum Corporation Ltd. and name of the contractor is mentioned on the said documents. There is another letter Ex.MW2/19 which pertains to the engagement of contract labour for maintenance of vehicles. There is also mention of writ petition No.7200 of 2000 before the Hon'ble High Court of Delhi. This letter also contains names of number of vehicles, jeeps etc. which are required to be repaired and maintained by the labour, i.e. claimants herein who are working in the premises of the management. There are also other documents such as Ex.MW2/22 as well as extract of wage/pay register Ex.MW2/6 wherein names of the claimants herein who are working in the premises of the management are shown ant it pertains to the month of November 1999, January 2000, February 2000 and July 2001. These documents are not helpful to the case of the management in any manner as there is no mention of the name of the contractor in any of the columns. Rather it contains the names of the various workmen and in the last column, signatures of the workman are obtained regarding receipt of wages by them.

28. To my mind, it would have been useful for the management to have examined atleast some of the contractors to whom work was allotted by the management from time to time and copies of the agreements which was entered into between the management and such contracts were required to be proved in accordance with law so as to prove the plea of the claim that they were employees of the contractors and not that of the management. Since there is serious dispute of relationship of master and servant between the management and the contractor, therefore production of these agreements was essential. All these documents were admittedly in possession of the management, who had initially taken the stand that no contract agreement is available in the office of the management. The case was deferred several times when statement of Shri Ashwani Kumar was recorded. Law is fairly settled that if a party in possession of documents does not produce such documents despite directions of the court and no plausible explanation is given by he said party for non-production of the same, in that eventuality, court is at liberty to draw adverse inference against the said party, more so when some of the documents which are favourable to the management have been placed on record whereas the other documents, despite directions, were not placed. In this regard, it is appropriate to refer to the admission made by Shri Ashwani Kumar MW1 who has clearly stated in his cross-examination dated 25.05.2012 that the management deducted EPF subscription out of the wage of the claimants and he has given specific answer to the question put on behalf of the claimant. However, when appeared on the next date of hearing, he shifted the stand and said the management is the principal employer and there is no record available in the office of the management regarding deduction of EPF. When arguments were partly heard in the case, learned A/R for the management came with an application so as to show that the management was exempted from payment of ESI and in this regard invited attention of the court to Ex.MW2/2 which relates to exemption of ESI by the management. The question before this Tribunal is not whether the claimants ESI or EPF was being deducted or not. The sole question before this Tribunal is whether claimants are liable to e regularized in view of order of termination passed against the said claimants.

29. Learned A/R for the management raised the plea that question of sham and bogus agreements cannot be entertained and this Tribunal cannot travel beyond the terms of reference in view of the specific provisions contained in Section 10 of the Act. There is hardly any dispute with the proposition of law that this Tribunal is required to answer the reference made by the appropriate Government. However, all the incidental questions relevant to the main issue which are integral part of the reference are also required to be answered by this Tribunal. Moreover, reference before this Tribunal is not to the effect that whether the claimants herein are employees of some contractor or that of the principal employer, i.e. management herein. The reference is very specific and this Tribunal is required to answer the question whether demand of the claimants terminating the job of the claimants herein by the management is fair and justified.

30. Learned A/R for the management during the course of arguments relied upon a number of authorities so as to support her plea that the claimants herein are employees of the contractor and are not in the employment of the management. In this regard, reliance was placed upon the case of International Airport Authority of India Vs. International Air Cargo Workers Union (2009) 13 SCC 374, General Manager Bengal Nagpur Cotton Mills Vs. Bharat Lal & another, (2011) 1 SCC 635, National Aluminum Company Limited vs. Ananta Kishore Raut & Others (2009) 9 SCC 462, S.C. Chandra Vs State of Jharkhand (2007) 8 SCC 279, Hari Shankar Sharma Vs. Artificial Limbs Manufacturing Corporation (2002) 1 SCC 274, India General Navigation and Railway Company Ltd. vs their Workmen (Civil Appeal No.514 of 1964), NC John Vs. Secretary, Thooupzma Taluk Shop (1973 1 LLJ 366 Kerala High Court), Oshiar Prasad & Others Vs. the Employees in relation to management of Sudamdih Coal Washery of M/s. BCCL, Dhanbad, Jharkhand (SLP(C) 33509/2011 decided on 02.02.2015, Oil and Natural Gas Corporation KG Project Rajahmundry Vs. N. Satyanarayan (2003) 3 ALD 711 Andhra High Court, (Dyes and Chemical Workers Union Vs.

Bombay Oil Industries Ltd. (2001) 89 FLR 638. Reliance was also placed on a few other authorities related to deposit of EPF, ESI etc. which is not to be considered as relevant or decisive factors for deciding relationship of employer and employee.

31. Learned A/R for the claimants urged that in the present case there is ample evidence on record to suggest that the claimants have been working in the premises of the management for the last more than 15-18 years and having performed their duties sincerely and regularly. Claimants were not in the knowledge that in the record of the management they have been shown to be working under any contractor. It was further urged that in view of the ratio of the case in Steel Authority of India Vs. National Union Water Front Workers (2001) 7 SCC 1 as well as Anoop Sharma Vs Executive Engineer (2010)SCC 5497, management was required to serve notice upon the claimants before terminating their services and retrenchment compensation was also required to be paid to the claimants at the time of their termination.

32. During the course of arguments it was not disputed on behalf of either of the parties that no written notice was served upon the claimants when their services were terminated either by the contractor or by the management nor were they paid any retrenchment compensation as per Section 25-F of the Act before their termination. In such circumstances, it is thus clear that there is clear-cut violation provisions of section 25-F of the Act. It is also clear from record of the case that claimants herein are working continuously with the management, may be on papers through contractors for some time and they have completed 240 days in a year prior to their termination. Management has also not adduced any evidence so as to show that they were not directly engaged initially. As discussed above, management in its reply has only mentioned names of M/s. Tiwari & Co. and M/s. Flora Automobiles who were engaged by the management as contractors. The most relevant period in the present case was when services of the claimants herein were terminated, i.e. 31.03.2002, as to who was the so-called contractor engaged by the management.

33. Hon'ble Apex Court in the case of SAIL Court in Steel Authority of India and others Vs. National Union Waterfront Workers and others [2001 (7) SCC 1] was primarily concerned with the meaning of the expression 'Appropriate Government' as used in Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970 and in Section 2(a) of the Industrial Disputes Act, 1947 in relation to State Government or the Central Government. The other issue involved before the Apex Court was the automatic absorption of contract labour in the establishment of the principal employer as a consequence of abolition notification issued under Section 10A of the CLRA Act 1970. Supreme Court while partly overruling the judgement in Air India Statutory Corporation vs. United Labour Union [1997 (9) SCC 377] prospectively held that neither section 10 of the CLRA Act nor any other provisions of the Act, whether expressly or by necessary implication, provides for automatic absorption of the contract labour on issuance of notification under the said section, prohibiting contract labour and consequently principal employer is not required to absorb contract labour working in such establishments. In the said case, another incidental issue whether relationship of master and servant between the principal employer and contract labour emerges after issuance of notification under section 10 of the CLRA Act was also considered by the Court. After discussing the entire spectrum of the case law on the subject in Para 125 of the judgement, it was held as under:

> (3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment;
>
> "(4) We overrule the judgment of this Court in Air India case prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case shall hold good and that the same shall not be set aside, altered of modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final."
>
> (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

34. A critical examination judgement in SAIL case (supra) would show that this judgement shines like a pole star in the galaxy of precedents in the field of industrial laws and provides a beacon light to all those who are lost in the mist of legal confusion.

35. It is clear from the various judgements that there are a number of factors which are required to be considered in order to determine whether the workmen are directly in the employment of the principal employer, i.e. management herein or were employees of the so-called contractors. One fact which is apparent from the perusal of the entire file is that different contractors have been engaged by the management on paper from time to time but the workmen remained the same despite engagement of different contractors by the management. It is, thus, sheer case of name-lending by the contractor to the principal employer or company. Admittedly, all the claimants were working in the premises of the management and were doing the work of repair etc., which fact was not disputed by any of the parties. There is no mention of name of any supervisor of any of the contractors who was having any kind of control over the claimants herein. Rather, evidence of the claimants herein is explicit on the point that they were doing work at Shakur Basti installation on the orders of the officials of the management who were getting all kinds of work from them. Onus to prove the contract or agreement between the principal employer and the contractor was on the management and also as to exercise of supervisory or administrative control by the contractor on the employees was very heavy on the management, who has not examined even a single contractor so as to prove any of the contract as well as period of contract, including number of workers to be engaged by such contractor for performance of the work. At this stage, it is also appropriate to refer to the provisions of CLRA Act which clearly provides that no contractor shall undertake or execute any work through contract labour unless Licence has been issued in favour of such contractor by the Licensing Officer in terms of Section 12 of the CLRA Act. Similarly, the principal employer is also required to register itself by making an application to the registering Officer in the prescribed manner so that the principal employer could engage contractor for execution of the work. Contravention of Section 7 or 12 of the CLRA Act is also an offence under the law. It is further clear from perusal of section 21 of the CLRA Act that the principal employer shall nominate a representative to be present when wages are paid to the workmen and in case contractor fails to make payment of wages, it is the duty of the principal employer to make payment of such wages. Further Rule 72 enjoins upon the principal employer to authorize a representative when salary is paid to the workmen and his signatures are also required to be appended on the register of wages. After payment of salary to the workmen, a copy of the same is required to be sent to the principal employer by the contractor. In the case on hand, the above requirements have not been followed at all by the principal employer as management has not produced the salary record of the claimant right from the beginning when the claimants were working till the date of their termination on 31.03.2002. Management has selectively filed only some of the record pertaining to 2-3 contractors whose names are mentioned in the written statement. Even the said contractors have not been examined so as to prove that it was the contractor who was getting work from the claimants herein in the premises of the management. In such circumstances, merely because payment was made through contractors cannot be said to create relationship of employer and employee between the contractors and the claimants herein.

36. I have carefully gone through the ratio of the authority in International Airport Authority of India Vs. International Air Cargo Workers Union(2009) 13 SCC 374 and a scrutiny of the facts of the above rulings would show that the appellant company, International Airport Authority of India(IAAI) in the said case gave licence to a private contractor for groundling of cargo and the contractor was entitled to collect charges from the consignor and consignee. The said private contractor employed its own workers for ground handling of cargo. When the appellant company (IAAI) terminated the licence of the private contractor. Workers then requested the appellant company (IAAI) to give them employment. appellant company (IAAI) gave them casual employment for some time purely as temporary measure and on humanitarian grounds. Subsequently, the said workers formed a co-operative society to which contract of ground handling was given. The issue before the court was whether the contract between appellant company (IAAI) and the Co-operative society was sham and the workers were direct employees of the appellant company (IAAI). Initially award was passed by the Industrial Adjudicator in favour of the contract workers holding that the contract between the appellant company (IAAI) and the society was sham. However, in writ petition, Single Judge of the High Court quashed the award given by the Industrial Court but the Division Bench of High Court in writ appeal reversed the decision of the Single Judge. It was thereafter that the matter was taken by appellant company (IAAI) before the Hon'ble Apex Court and their plea was allowed by holding that ultimate supervision and control of the handling work

in the said case was with the contractor as it is he who decides where an employee is to work and how long he will work, subject to other job conditions. It was the contractor who was assigning and sending workers to work from one place to another. In view of this factual scenario, it was ruled that the contract workers were employees of the contractor and not that of the appellant company (IAAI). The factual situation in the case on hand is entirely different from the factual scenario discussed above as in the case on hand there is ample evidence on record to suggest that the claimant here were doing /performing work at Shakur Basti installation under the direct supervision and control of the officials of the management and this fact is amply clear even from the statement of the witnesses examined by the management as well as other evidence on record. There is not even an iota of evidence on record to suggest as to any contractor or his supervisor had ever visited premises of the management so as to give directions to the claimants, who were admittedly doing work in the premises of the management. Management has also not examined, as discussed above, any contractor or any supervisor who was engaged by such contractors so as to prove the factum of ultimate supervision and control of the work on the claimants, as such, ration of this authority is not of any help to the case of the management. Moreover, in the authority relied upon by the management there is ample evidence on record to suggest that it was the contractor who was exercising every kind of control over the contract workers and ad hoc employment was given to the said workers of the said contractor on humanitarian grounds for a short period. In the above authority, i.e International Airport Authority of India vs. International Air Cargo Workers Union (AIR (2009) SC 3063), it was held as under:

> "When the contract labour contends that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employees."

37. Similarly, ratio of the judgement in General Manager Bengal Nagpur Cotton Mills Vs. Bharat Lal & another, (2011) 1 SCC 635 is also not of any help to the management. In the said case, as is clear from the fats, respondent was engaged through contractor as security guard for duties at the appellant mill in December 1980 and services of such contract guard was terminated in July 1982 as the appellant mill terminated services agreement with such contractor on 16.08.1982. The contract worker, after five years of this termination filed a dispute for declaring that his termination from service is illegal and he be given all consequential relief. Labour Court partly allowed the plea of the workman and directed the principal employer to reinstate the contract worker to his post and pay him arrears. Thereafter, the principal employer went in appeal before the Hon'ble High Court wherein the employer was directed to pay full wages during pendency of the appeal to the contract worker. It so happened thereafter that the mill of the principal employer was closed in October 1992 as it was declared a sick unit. It was also held by the Industrial Court that the agreement between the principal employer and the private contractor was sham and nominal. High Court had also dismissed the appeal filed by the principal employer and the matter finally reached Hon'ble Apex Court wherein appeal filed by the principal was allowed and order of the Industrial Court and High Court was set aside. In the said case, Hon'ble Apex Court laid down two basic tests in order to determine whether contract in the given case is sham and nominal and in para 10 of the judgement, it was observed that the Industrial Court is required to keep in mind the well-recognized tests to find out whether the contract labour are the direct employees of the principal employer are (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. The Industrial Court in the case decided the case in favour of the contract employees. However, Hon'ble Apex Court observed that the Industrial Court committed a serious error in arriving at the said conclusion as onus was wrongly placed upon the management to prove the material issue of contract being sham and nominal. It was also found by the Apex Court that the contract worker has misrepresented facts that he was not in employment after termination whereas on record employment certificate of the contract worker was filed by the company, which was not even denied by the contract worker. It was on account of this reason that due to deliberate suppression and misrepresentation of facts, contract labour was held not entitled for reinstatement, including payment of back wages.

38. Strong reliance was also placed by the management in the case of National Aluminum Company Limited vs. Ananta Kishore Raut & Others (2009) 9 SCC 462. It was a case where NALCO had established various schools and provided infrastructure as well as financial support to the said schools. Management Committee of the Schools were constituted to run administration of school, including engagement of staff etc. It was the Management Committed which recruited staff and all decisions regarding their service conditions was taken by the said managing committee without any control or approval from NALCO. Later on, administration of the school was given to some other society on the decision of the Management Committee. The school has made recruitment of various staff and later on terms of the same agreement expired, resulting in retrenchment of the employees. Ultimately, question which arose for consideration was whether the said employees are in the employment of the Management Committee of the School or

that of NALCO. It was held that there was no supervisory control over working of the staff or canteen of NALCO and every thing was being done by the managing committee of the school. Day to day supervision and control is vested with the managing committee from appointment till termination of the workers.

39. I really fail to understand as to how this ruling is helpful to the case of the management when evidence of the management is to the contrary and the management has not examined any contractor or its supervisors so as to show, as discussed above, that any direct supervision or control was exercised by such contractor or supervisor on the spot upon the claimants. Shri Balwinder Singh Babberwal, MW2 has admitted in his cross examination that the claimants were working in the premises of the management from 1985 till 2002 under different contractors. They were doing the work of maintenance and repairing of company vehicles, which was upto the mark. Though he has denied that the claimants were directly employed by the management. However, he has not mentioned name of any contractor to whom work was given in the year 1985. There is no document of the management on record to show that in the year 1985 or immediately thereafter as to who was the contractor engaged by the management for doing such work. Rather, this witness as well as MW1 Shri Ashwani Kumar have stated that contract documents are not available with the management as the same could not be traced despite best efforts. Later on, Shri Babbarwal, in his cross examination dated 04.06.2013 produced agreements Ex.MW2/W3 to Ex.MW2/W5. He has further admitted that there are no signatures of the contractor on these documents. A bare perusal of Ex.MW2/W3 would show that it is the roster of drivers which contains names and number of the vehicles as well as drivers/helpers who hare performing duties with the vehicles as mentioned in the said letter. There is no mention of any contractor on these documents. Similarly in Ex.MW2/W3 pertains to maintenance and repair of vehicles owned by the management and the same is signed by the Deputy General Manager of the management. There are documents attached with this document which shows that the same is signed by the DGM and there is mention of fixed labour charges in the said documents. Perusal of all these documents show that nowhere there is mention of the name of any contractor. Moreover, documents Ex.MW2/W3 are dated 03.06.1995 and other documents are for subsequent periods. Ex.MW2/W4 dated 28.01.1991 refers to the standing purchase orders at Shakur Basti. Perusal of Ex.MW2/W6 to Ex.MW2/W10 clearly shows that the vehicles were driven and filling was also being done in the vehicles on the orders of the officials of the management and nowhere these documents contractors are involved in any manner. The above documents pertain to the year 1994-95, 2001 etc. Document ExMW2/W9 shows that one Shri Madho Singh was entrusted with duty of keeping vigil on the tank properly and this document is also signed by the management. Perusal of the documents mentioned above is clearly suggestive of one fact, that whatever duty was being performed by the workmen engaged at Shakur Basti installation was at the instance of the officials of the management and there is no mention of any contractor.

40. Reliance was also placed upon the case of S.C. Chandra Vs State of Jharkhand (2007) 8 SCC 279. In this case, the issue of employer and employee relationship was involved. In fact, the issue before this Court was for parity of wages and question of agreement/contract being sham or nominal was not directly involved; It was further held in this case that simply because nature of the work was same would not entitled the employee for equal pay with the other employees whose mode of employment, experience etc. is different. The employer of Subhash Chander was not being maintained by BCCL in any manner, as such, it was held that they are employees of the School.

41. I have also gone through the judgement in Hari Shankar Sharma Vs. Artificial Limbs Manufacturing Corporation (2002) 1 SCC 274. To my mind, the factual scenario in the said case depicts entirely a different picture from the controversy on hand. In the said case, the company owned a factory where more than 200 workers were employed and a canteen was set up on the premises for the employees. From time to time agreements were into between the contractor of the company and it was the contractors who were preparing and serving foodstuff. Workmen claimed themselves to be direct employees of the company and sought regularization. When they failed before the Labour Court, matter was taken by the workers of the canteen before the Apex Court and in this case reference was made to Section 46 of the Factory Act, 1947 in which a company is cast with statutory obligation to provide and maintain a canteen for the use of its employees. It was against this background that held that setting up of the canteen by the company was a statutory requirement and employer of the canteen cannot be said to be employer of the management. Again, as discussed above, control regarding mode of work and nature of duty in the case relied upon was with the manager of the canteen and the principal employer has nothing to do with the same, whereas in the case on hand, everything is vice versa as it was the management who is having full effective control over the employees, i.e the claimants herein who were performing and taking vehicles for filling, repair etc. to various places as is clear from the documents discussed above. Resultantly, ratio of this authority is also is not of any help to the case of the management.

42. In India General Navigation and Railway Company Ltd. vs their Workmen (Civil Appeal No.514 of 1964), it was case of termination of 56 workers who alleged themselves to be in the direct employment of the company whereas the case of the management was that they were not its employees and termination of their services was a result of closure of the business and the said closure was held to be bonafide by the Tribunal. It was also held that there was no direct relationship of master and servant between the company and the workers.

43. Learned A/R for the management also relied upon certain other authorities regarding regularization of the workmen. There is no dispute to the proposition of law that there cannot be regularization of daily wage workers unless there is policy of the management to regularize such workmen. Moreover, question of regularization would arise only when termination of the workmen is held to be bad under the law or such workmen are ordered to be reinstated.

44. The learned A/R for the claimant also relied upon a number of authorities so as to prove that there is gross violation of provisions of Section 25-F of the Act as well as other provisions. In this regard, strong reliance was placed on the case of Anoop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana), reported in (2010) 5 SCC 497 has discussed in detail provisions of Section 25F of the Act and held as under:

> 25-F Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.
>
> 16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.
>
> 17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity

45. Reliance was also placed by the learned A/R for the claimant upon the case of Secretary, Haryana State Electricity Board vs. Suresh Kumar (1999) LLR 433. In this case, Electricity Board has awarded contracts to private contractors to undertake work of maintenance and cleaning of plants at various places in the State. When the said contract expired, services of the contract employees were terminated by the contractor and the matter was taken to the Industrial Court. Labour Court ordered reinstatement with continuity of service to the said contract employees alongwith 10% back wages. When matter was taken to the Hon'ble High Court by the management of Electricity Board, it was held that there existed relationship of employer and employee between the Electricity Board and the karamcharis (contract employees). As such, to this extent order of the Labour Court was upheld. However, no back wages were granted. It was held by the Hon'ble High Court that maintenance of plant is not seasonal work in nature and overall control over such contract labour was that of the officials of Electricity Board who were issuing necessary directions to such employees from time to time and were also exercising administrative control. Electricity Board finally took up the matter with Hon'ble Apex Court wherein strong plea was raised that karamcharis were employees of the contractor and not that of Electricity Board inasmuch as wages were being paid to the said employees through the contractor. It was proved on record that the employees in the above case were in continuous employment though private contractors kept on changing from time to time. In this background, it was observed by the Hon'ble Apex Court that doctrine of lifting of veil as enunciated in the case of Solomon vs. Solomon can be applied to decide the relationship of employer and employee in cases falling under contract labour. It was also held that the work of maintenance cannot by any stretch of reasoning be ascribed to be of seasonal nature. The number of employees required for maintenance and upkeeping of the plants are also mentioned in the contract. Finally, in para 19, Hon'ble Apex Court, held as under:

> It has to be kept in view that this is not a case in which it is found that there was any genuine contract labour system prevailing with the Board. If it was a genuine contract system, then obviously, it had to be abolished as per Section 10 of the Contract Labour Regulation and Abolition Act after following the procedure laid down therein. However, on the facts of the present case, it was found by the Labour Court and as confirmed by the High Court that the so called contractor Kashmir Singh was a **mere name lender** and had procured labour for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. The Labour Court also noted that the Management witness Shri A.K. Chaudhary also could not tell whether Shri Kahsmir Singh was a licensed contractor or not. That workmen had made a statement that Shri Kashmir Singh was not a licensed contractor. Under these circumstances, it has to be held that factually there was no genuine contract system prevailing at the relevant time wherein the Board could have acted as only the principal

employer and Kashmir Singh as a licensed contractor employing labour on his own account. It is also pertinent to note that nothing was brought on record to indicate that even the Board at the relevant time, was registered as principal employer under the Contract Labour Regulation and Abolition Act. Once the Board was not a principal employer and the so called contractor Kashmir Singh was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that the so called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board, on the one hand, and the employees, on the other, could be clearly visualized."

46. In the case on hand also, as is clear from evidence on record that the claimants herein are virtually in continuous employment since 1985 onwards and they are performing their duties in the premises of the management since then. Management has not examined, as discussed above, any contractor or supervisor engaged by such contractors so as to show that supervisory and administrative control over the said claimants was that of the contractor and not that of the management. Rather, evidence on record is very explicit to the effect that duties are being assigned to different claimants by the officials of the management regarding filling of diesel as well as other duties regarding repair and maintenance of vehicles. There is not even a shred of evidence on record to show that any contractor or his supervisor had at any point of time issued any kind of direction regarding performance of duties in the premises of the management where such employees were admittedly working in various shifts. There is also no specific evidence on record to prove as to who was the last contractor engaged by the principal employer, i.e. management herein to whom work was assigned by the management by executing valid contract. Moreover under what circumstances termination of services of the claimant on 31.03.2002 was done either by such contractor or the management? All this was within the knowledge of the management who is admittedly the principal employer and management should have submitted entire record pertaining to engagement of such contractors from time to time. There also appears to be violation of provisions of CLRA Act by the management. It is clear from provisions of the CLRA Act and rules made therein that whenever a contract is entered into between the parties, the number of workers to be engaged with their full names and details is also required to be mentioned in the contract documents. It is further the duty of the principal employer to ensure that wages are paid to such employees on the spot by the contract as is clear from Rule 72 of Contract Labour (Central) Rules 1971. The principal employer is also required to ensure compliance of other provisions of CLRA Act as well as rules made therein. There is also an obligation upon the management to maintain register of contractors in terms of Rule 74 in Form XII and form XIII requires every contractor to append names of the employees engaged by him. Since in the case on hand, employees, i.e. claimants herein, remained the same though contractors kept on changing from time to time, which fact was not disputed even by the management, it is clearly suggestive of the fact that such contractors were simply name lenders and they were not having any effective or supervisory control over the employees on the spot. Since, no contractor has been examined by the management, as such merely filing of contract documents which do not even contain signatures of the contractors is not of much value. In such circumstances, this Tribunal is of the firm view that the claimants herein cannot be said to be employees of the contractor as was being strongly urged on behalf of the management and they are held to be employees of the principal employer.

47. Admittedly, in the case on hand, there is blatant violation of provisions of Section 25-F of the Act and there is a long line of decisions of Hon'ble Apex Court that non-compliance of provisions of section 25-F of the Act would render action of the management to be totally illegal and void under the law.

48. Now, the residual question before this Tribunal is as to what relief the claimants herein are entitled to? Since this Tribunal has already held that the above claimants were in employment of the management since 1985 onwards and they were also performing their duties continuously and as such, it cannot be said that the work which they were performing is seasonal or temporary in nature.

49. No doubt, earlier a view was articulated by the Hon'ble Apex Court in several authorities and legal position was that if termination of a workman is found to be illegal or against the principles of natural justice, in that eventuality, relief of reinstatement with back was would follow. This view was taken by Hon'ble Apex Court in Deepali Gundu Survase Vs. Kranti Junior Adhyapak Mahavidyalaya (2013 AIR SCW 5330). However, in the recent past, there is change in this trend and now in several cases a view has been taken that relief by way of reinstatement alongwith back wages is not automatic even though the action of the management has been found to be totally illegal or void under the law. Question of grant of back wages as well as reinstatement, in fact, would depend upon a number of factors, e.g. nature of post, mode of recruitment, duration of engagement, delay in raising the industrial dispute, nature of the work being performed by the workman etc. However, there cannot be any straight jacket formula to be applied in a mechanical manner by the courts.

50. At this stage, it is necessary to mention that in Oshiar Prasad Vs. Sudamdih Coal Washery (2015) 4 SCC 71, Hon'ble Apex Court while dealing with almost similar case held that when services of a workman have been terminated long back prior to making of the reference and such workmen were either not in the services of either Contractor or/and the previous employer, in that eventuality, question of their absorption or regularization did not arise

nor this issue could have been gone into on its merits for the reason that they were not in service. Question of regularization thus can only be considered when contract of employment subsists. In the case on hand, as is clear from the pleadings as well as evidence on record, services of the claimants herein were terminated on 31.03.2002 and thereafter they are virtually out of employment and evidence on record is quite clear that they have been in service of the management for the last more than 15-18 years prior to their termination. In view of this, reference is answered accordingly, partly in favour of the claimant holding that instead of reinstatement or regularization of their services, they are entitled for reasonable compensation. Having regard to the length of their service and the latest trend of the Hon'ble Apex Court reflected in the various judgements, I am of the view that an amount of Rs.5 lakh appears to be just and reasonable. It is also made clear that in case any of the claimant/s expired during pendency of the proceedings before this court, in that eventuality, compensation would be paid to the legal heirs of such deceased claimant/s. In case compensation of Rs.5 lakh is not paid within a period of one month from the date of publication of the award, the claimants would also be entitled to interest at the rate of 9% per annum upon the said amount from the date of the reference till its payment. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 15, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 20 दिसम्बर, 2017

का.आ. 2904.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 29/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.12.2017 को प्राप्त हुआ था।

[सं. एल-17012/21/2013-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th December, 2017

S.O. 2904.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2014) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 12.12.2017.

[No. L-17012/21/2013-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.2, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 29/2014

Shri Pritam Pal Sharma,
Ex-Sub Staff
Village & PO Nigdhu,
Distt. Karnal
Karnal, Haryana …Workman

Versus

1. The Zonal Manager,
   Zonal Office,
   Life Insurance Corporation of India,
   Jeevan Bharti Building,
   Post Box No.630,
   Connaught Circus,
   New Delhi – 110 001

2. The Divisional Manager,
Life Insurance Corporation of India,
Divisional Office, Jeevan Prakash,
489 Model Town,
Karnal, Haryana …Managements

AWARD

In the present case, a reference was received by Central Government Industrial Tribunal-cum-Labour Court No.2, Chandigarh vide order No.L-17012/21/2013/IR(M) dated 07.10.2013 for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of Life Insurance Corporation of India, in terminating the services of Shri Pritam Pal Sharma, ex-Sub Staff with effect from 27.02.2009, is legal and justified? What relief the workman is entitled to?

2. Later on, vide letter No.17012/21/2013-IR(M) dated 21.03.2014, the case was transferred to this Tribunal for adjudication.

3. Both parties were put to notice and it is clear from the statement of claim that Shri Pritam Lal Sharma (in short the claimant) was appointed on regular basis as sub staff with effect from 07.05.1990 and worked continuously to the satisfaction of the management. Previously, the claimant availed leave for 72 days on different occasions due to illness of his wife as she was a patient of cancer, sickness of his son and sudden demise of his mother. The management has now removed him from service on 27.02.2009.

4. It is the case of the claimant that he was served with show cause notice and he has also filed reply to the said notice. Management also served the claimant with charge sheet to which reply was filed by the claimant, wherein he has taken the stand that he has taken leave due to unavoidable circumstances and had duly communicated to the management the reasons for his absence. He has also furnished medical certificates to the management. Management has removed the claimant from service for remaining absent for the period as mentioned in para 9 of the statement of claim. Thereafter, it transpires from the record that the claimant has also filed appeal/representation to the Appellate Authority against the quantum of punishment and it is alleged that the Appellate Authority has not gone in depth regarding the circumstances pertaining to the absence of the claimant. The Appellate Authority vide order dated 08.09.2009 dismissed the appeal of the claimant.

5. The claimant has further alleged that the order of termination for the misconduct is not of a grave or serious nature but the same is minor or technical in nature. He has also made reference to item No.5(g) in Schedule V u/s 2(ra) of the Act pertaining to unfair labour practice and finally prayer has been made that the claimant be reinstated in service with full back wages.

6. Management filed written statement taking various preliminary objections. It has been alleged that the workman is a habitual absentee and he was issued charge sheet dated 18.10.2008 regarding his absence from duties for a period of 76 days from April 2008 to August 2008. Claimant has clearly admitted charges of absenteeism and ultimately punishment of 'Removal from service' was imposed vide communication dated 27.02.2009. There is also reference to the period of unauthorized absence of the claimant in the past and penalty imposed, details of which is as under:

Order dated	**Penalty imposed**
22.11.1993	Censure
13.07.1995	Reduction in basic pay by one stage
10.07.1997	Reduction in basis pay by two stages
27.10.2005	Reduction in basic pay to minimum
Appeal order dated 05.04.2006	Reduction in basic pay by 5 stages
Memorial dated 18.10.2006	Reduction in basic pay by 5 stages

7. On merits, it is admitted that the claimant was in service of the management and he now stands removed from service. Management has denied the material averments contained in the statement of claim.

8. Against this factual background, this Tribunal, on the basis of pleadings of the parties framed the following issues:

(i) Whether the enquiry conducted by the management is just, proper, fair and legal. If so, its effects?

(ii) Whether the action of the management of Life Insurance Corporation of India in terminating the services of Shri Pritam Pal Sharma, ex-sub staff with effect from 27.02.2009 is legal and justified? If so, its effects?

(iii) To what relief the workman is entitled to and from which date?

9. Issue No.(i) was treated as preliminary issue. Thereafter, management has adduced evidence by filing entire record pertaining to domestic enquiry. Management examined Shri Pravin Kumar Singla as MW1, whose affidavit is Ex.MW1/A. He also tendered in evidence documents Ex.MW1/1 to Ex.MW1/3. Claimant examined himself as WW1 and his affidavit Ex.WW1/A.

10. My predecessor, vide order dated 27.04.2017 held that the domestic enquiry conducted by the management is legal and fair and the same is in consonance with the principles of natural justice. While doing so, reliance was placed upon the case of Delhi Transport Corporation Vs Rajendra Kumar (2017) LLR 390 wherein it is observed that when an employee absent from duty and where period of absence is also long, there is no question of showing sympathy to such an employee. Record of the case further shows that the case was listed for fresh arguments and arguments were heard on other issues. Though Shri B.K. Prasad, learned A/R for the claimant strongly urged that the punishment awarded in the present case by the management is very grave and severe in nature, as such, this Tribunal should take a holistic view of the matter and reduce the punishment from 'removal from service' to any other punishment which is permissible under the law. It was also urged that absence of the claimant herein during the period mentioned in the charge sheet was not without any reasonable cause as he has filed medical certificates as proof of his ailment as well as ailment of other family members.

11. Per contra, authorized representative appearing on behalf of the management urged that findings of the enquiry officer has been upheld by this Tribunal, hence there is no question of reducing the punishment awarded by the competent authority unless facts and circumstances of the case so warrants. It is appropriate to refer to the case of Uttar Pradesh State Road Corporation Vs. Subhash Chand Sharma AIR 2000 SCC 1163 a case where the workman was a driver in UPSRTC and he alongwith the conductor went to the office of the Assistant Cashier and demanded money from him. When the Assistant Cashier refused to make payment, the driver abused him and threatened to assault him. A departmental enquiry was constituted where the misconduct was proved against the driver and he was removed from service. Later on, when reference was made to the Labour Court, order of 'removal from service' was set aside and the Labour Court ordered 'stoppage of one increment' instead of 'removal from service' with 50% back wages. This award was challenged before the High Court in a writ petition which was summarily dismissed. Finally, management took the matter to the Hon'ble Apex Court wherein question of punishment as awarded by the competent authority was discussed. Hon'ble Apex Court while relying on judgement of three judge bench titled Union of India vs. B.C. Chaturvedi (1995) 6 SCC 749(750) held that under Section 11 of the Act, Labour Court/Tribunal has powers to apply its mind on the question of proportionality of punishment or penalty and this power is also available to the High Court under Article 226 of the Constitution. However, this was quantified with a limitation that in a proceedings before Labour Court or Writ Court, scope of interference is limited and is permissible only when punishment or penalty is shockingly disproportionate. A similar view has been taken by the Hon'ble Apex Court in the case of Management of Karur Vyasa Bank Ltd. Vs. S. Balakrishnan (2016) 12 SCC 221. It was a case where in a domestic enquiry, charges were proved and punishment of 'dismissal' was awarded. Upon a reference, the Tribunal also found the enquiry to be fair and proper; however, punishment of 'dismissal' was held to be excessive and unjustified. When matter was taken to the Supreme Court, it was held that an Industrial Tribunal exercising jurisdiction under Section 10 of the Act upon a reference, cannot act as a court of appeal. Once the Tribunal had reached the conclusion that enquiry was fair and proper, no further scrutiny of evidence is permissible nor Tribunal can assume jurisdiction of Appellate Court.

12. In the case on hand, now this court has to examine the question of quantum of punishment imposed by the competent authority on the touchstone principle enunciated in the above rulings. There is ample evidence on record that the claimant has remained absent even on previous occasions also and he was awarded the following punishments:

Order dated	Penalty imposed
22.11.1993	Censure
13.07.1995	Reduction in basic pay by one stage
10.07.1997	Reduction in basis pay by two stages
27.10.2005	Reduction in basic pay to minimum
Appeal order dated 05.04.2006	Reduction in basic pay by 5 stages
Memorial dated 18.10.2006	Reduction in basic pay by 5 stages

13. Having regard to the number of punishments which have been awarded to the claimant herein from time to time, it is crystal clear that the claimant herein is not entitled for any indulgence in the matter inasmuch as he is continuously committing the same mistake by remaining unauthorizedly absent from time to time. Consequently, punishment of 'removal from service' awarded by the competent authority is in consonance with the misconduct committed by the claimant and it does not require any interference by this Tribunal. Hence, issue No.(ii) and (iii) are answered in favour of the management and against the claimant.

14. As a sequel to my above discussions, it is held that I do not consider it to be case for indulgence by this Tribunal. In view of these reasons, punishment awarded to the claimant is found to be justified. His claim is liable to be dismissed. Accordingly, the claim put forward by the claimant is brushed aside. An award is, passed in favour of the management, i.e. Life Insurance Corporation of India and against the claimant. It be sent to the appropriate government for publication.

Dated : September 21, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2905.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, एमसीडी का प्रबंधन, दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 56/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.11.2017 को प्राप्त हुआ था।

[सं. एल-42012/98/2011-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2905.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 56/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Management of MCD, Delhi and other and their workman, which was received by the Central Government on 14.11.2017.

[No. L-42012/98/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No.38-A (GF) KARKARDOOMA COURT COMPLEX, SHAHDRA, DELHI- 32

ID NO. 56/2012

S/Shri Ram Chander & 8 others, Nala Beldars,
who were working in (Drainage Department)
M.C.D.and lastly posted at Ward No.144,
Rangpuri, DEMS Department, Najafgarh Zone,
New Delhi,

Through Municipal Employees' Union,
Agarwal Bhawan G.T.Road,
Tis Hazari, Delhi – 110054 …Workmen

Vs.

The Management of Municipal Corporation of Delhi,
Through its' Commissioner,Town Hall,
Chandni Chowk, Delhi-110006
Now at Dr.S.P.Mukherjee Civic Centre,
J.L.Nehru Marg, Delhi-110002 …Respondent/Management

AWARD

1. This is a reference received from the Ministry of Labour, Govt. of India, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Tribunal Act, 1947, (in short, the Act) vide Order bearing No. L-42012/98/2011-IR (DU) dated 21.2.2012 for adjudication of an industrial dispute between the parties, terms of which are as under :

> *'Whether the action of the management of Municipal Corporation of Delhi (MCD), in terminating the services of S/Sh. Ram Chander son of Shri Vishnu Dutt & either others, (as per list enclosed), Ex.Nala Beldar w.e.f. 25.3.2009 is legal and justified? What relief the workmen are entitled to and from which date?*'

2. It is pertinent to note here that initially the workmen filed separate claim petitions under section 2-A (2) of the Act claiming similar relief which is the subject matter of the aforesaid reference. After the receipt of the above reference and filing of statement of claim, an application was moved on behalf of the workmen for consolidation of cases filed under Section 2-A(2) in respect of individual workman bearing ID Nos.125 to 132 and 169 of 2011 since the controversy in the claim petition under section 2-A of the Act as well as reference received by this court under section 10(1) of the Act were of the similar nature and common question of law is involved, as such these cases were ordered to be clubbed for all purposes. It is clear from the statement of claim that details of each of the workman as given in para is as under :

Sl.No.	Name & father's name	Date of appointment	Date of termination	place of posting
1.	Shri Ram Chander S/o Sh.Vishnu Dutt	21.09.2007	25.03.2008	Ward No.144, Rangpuri, DEMS, Deptt. Najafgarh Zone, New Delhi.
2.	Sh.Dilbagh Singh S/o Sh.Nand Kumar	21.09.2007	25.03.2008	Ward No.144, Rangpuri, DEMS, Deptt. Najafgarh Zone, New Delhi.
3.	Sh.Mohan Kumar S/o Sh.Rajbir Singh	21.09.2007	25.03.2008	Ward No.144, Rangpuri, DEMS, Deptt. Najafgarh Zone, New Delhi.
4.	Sh.Ghisa Ram S/o Sh.Roshan Lal	21.09.2007	25.03.2008	Ward No.144, Rangpuri, DEMS, Deptt. Najafgarh Zone, New Delhi.
5.	Sh.Anil Kumar S/o Sh.Manohar Lal	21.09.2007	25.03.2008	Ward No.144, Rangpuri, DEMS, Deptt. Najafgarh Zone, New Delhi.
6.	Sh.Yash Pal S/o Sh.Nand Kumar	21.09.2007	25.03.2008	Ward No.144, Rangpuri, DEMS, Deptt. Najafgarh Zone, New Delhi.
7.	Sh.Jitender Kumar S/o Sh.Ram Mehar	21.09.2007	25.03.2008	Ward No.144, Rangpuri, DEMS, Deptt. Najafgarh Zone, New Delhi.

8.	Shri Vikas Kumar S/o Sh.Mahender	21.09.2007	25.03.2008	Ward No.144, Rangpuri, DEMS, Deptt. Najafgarh Zone, New Delhi.
9.	Sh.Jitender Kumar S/o Sh.Surender	21.09.2007	25.03.2008	Ward No.144, Rangpuri, DEMS, Deptt. Najafgarh Zone, New Delhi.

3. It is alleged in the statement of claim that workmen herein joined the service with management i.e. M.C.D. w.e.f. 21.09.2007 as Nala Beldar. The workmen were being treated as daily rated/casual/muster roll workers and were being paid wages as fixed and revised from time to time under the Minimum Wages Act by the appropriate government while the regular employees who were performing the similar job were being paid higher pay scale as well as other facilities like uniform, EL, CL, Gazetted/festival/restricted holidays etc. The workmen have unblemished and uninterrupted record of service to their credit.

4. It is the case of the workmen that instead of regularizing their service, the management terminated the service of the workmen on 25.3.2009 by way of refusal of duties without assigning any reason. The action of the management has been alleged to be illegal and unjustified and in violation of the principle of equal pay for equal work. Finally the workmen have prayed that they be reinstated in service with full back wages including the consequential benefits as well as cost of litigation.

5. The claim of the workmen was resisted by the management by filing written statement and various preliminary objections have been taken by the management i.e. limitation, delay in latches. Reference has also been made tp the judgment **Secretary, State of Karnataka & Ors vs. Uma Devi & Ors, III (2006) SLT 539.** It is further alleged that workmen have not worked for 240 days before their alleged termination as such they are not entitled to any relief. On merits, management denied all the averments made in the statement of claim. However, it is admitted that workmen were engaged on daily wages on 16.12.2007 for specific work and for particular period in exigency of work after due approval from the competent authority. They were enrolled w.e.f. 16.12.2007 on the muster roll. It is denied that workmen were working against a regular nature of work. The management has no concern with the alleged unemployment of the workmen.

6. It is clear from the order dated 17.5.2012 of my ld. predecessor that an application was moved by ld. A/R for the workmen for clubbing of the cases bearing ID No. 125 to 132 and 169 of 2011 and no specific issues were framed in all the connected cases in as much as the issue involved in the present case was the reference made to this Tribunal for adjudication.

7. The workmen in order to prove the cause against the management, examined Shri Ram Chander as WW-1, who tendered in evidence his affidavit Ex.WW-1/A alongwith documents Ex.WW-1/1 to WW-1/30. Similarly in the other cases bearing I.D. No.125/2011 Shri Anil Kumar has been examined as WW-1, whose affidavit is Ex.WW1/A and he tendered in evidence documents Ex.WW1/1 to WW1/29; in ID No.127/2011 Shri Dilbagh Singh has been examined as WW-1/A and he tendered in evidence documents Ex.WW1/1 to WW1/15; in I.D.No.128/2011 Shri Yash Pal has been examined as WW-1, his affidavit is Ex.WW1/A and he tendered documents Ex.WW1/1 to WW1/29; in I.D.No.129/2011, Shri Jitender Kumar has been examined as WW-1, whose affidavit is Ex.WW-1/A and he tendered in evidence certain documents which are Ex.WW1/1 to Ex.WW1/30; in I.D.No.130/2011,Shri Mohan Kumar appeared as WW1 and tendered in evidence his affidavit Ex.WW1/A and documents Ex.WW1/1 to WW1/28; in I.D. No.131/2011 Shri Ghisa Ram as WW-1 whose affidavit is Ex.WW1/A and he tendered in evidence documents Ex.WW1/1 to WW1/28; in I.D.No.132/2011 Shri Vikas Kumar has been examined as WW-1 whose affidavit is Ex.WW1/A and he tendered in evidence Ex.WW1/1 to WW1/28; in I.D.No.169/2011 shri Jitender Kumar has been examined as WW1/A, his affidavit is Ex.WW1/1 and he also tendered in evidence documents Ex.WW1/1 to WW1/28.

8. The management in order to rebut the case of workmen examined Shri M.S.Yadav as MW-1 whose affidavit is Ex.MW-1/A. This witness has admitted that management had issued documents Ex.MW1/W1 to MW1/W7. He has also proved the muster roll Ex.MW1/W2. He has admitted that no charge sheet or domestic inquiry was initiated against the workmen in respect of their unauthorized absence. He has also admitted that no one month notice or pay in lieu thereof was given to the workmen and no retrenchment compensation was paid or offered to them. He has also admitted that seniority list of the workmen is being maintained by the management at its headquarters. He further deposed that workmen were engaged after 14.02.2009 as is clear from the record of muster roll etc. He further clarified that names of the daily wagers do not figure in the seniority list and that name of a daily wager would figure in seniority list on his completion of 240 days. He also admitted regarding non-filing of seniority list of such workmen. Lastly, he admitted that management has not produced the list of beldars/nala beldars before this Tribunal showing their engagement from 21.09.2007 to 31.12.2010. There is no explanation given by this witness for not filing of these

documents. This witness further deposed that he could not admit or deny if muster roll was issued consequent to Ex.MW1/3 and MW1/4. A bare perusal of Ex.MW1/3 and MW1/4 would show that permission for engagement of labour on muster roll was sought by Asstt. Engineer, as Beldar for removal of floating material and day to day maintenance of drainage system in Ward No.144, Rangpuri. Ex.MW1/W-6 is list of the workmen engaged as Nala Beldars in Rangpuri Area. Name of workmen Pawan Kumar etc. are fully mentioned in this list. It is further clear from the perusal of Ex.MW1/W7 that several complaints have been received and due to non-availability of nala beldars, it is difficult to cope with the work.

9. The statement of the workmen herein is in consonance with the averments made in the statement of claim and there is hardly any cross examination to these witnesses.

10. I have heard Shri Abhinav Kumar, ld. A/R for the workmen and Shri Rajeev Bhardwaj, ld. A/R for the management and have also carefully perused the entire record.

11. It was strongly urged on behalf of the workmen that all the workmen herein fall within the definition of 'workman' as defined in Section 2(s) of the Act and they have completed more than 240 days in a calendar year before the date of their termination. The attention of the court was invited to oral as well as documentary evidence so as to show that management has not followed any procedure while terminating the service of the workmen. No show cause notice was issued to the workmen nor one month salary in lieu of such notice was offered or given to the workmen.

12. It was also urged that the work of nala beldar is not temporary or seasonal work as their duty is of permanent in nature. There is always shortage of such workers before the Corporation and they are being engaged to cope up with the work.

13. Lastly, Ld. A/R for the workmen proceeded to argue that since the termination of the service of the workmen herein is totally illegal and in violation of the provisions of Section 25-F of the Act as such workmen are entitled to be reinstated in service with full back wages including all consequential benefits.

14. It was urged on behalf of the management that workmen were performing the work of nala beldar and they were casually and temporarily engaged for the said work on muster roll for cleaning the stormed water from the drainage from time to time and their engagement was hardly for 89 days and not regular in nature. Ld. A/R for both the parties placed reliance upon certain rulings in respect of the stand taken in their respective pleadings. However, I would refer the said rulings at a later stage.

15. It is clear from the matrix of the case that workmen herein were engaged by the management as daily wager/casual workers for cleaning of the drainage. It has also been admitted in Para 4 of the preliminary objections of Written Statement that such workers were not entitled for holidays and other benefits etc.

16. During the course of arguments, it was not even denied by A/R for the management that even daily rated or muster roll workers for the purpose of Industrial Dispute Act, 1947 are 'workmen' within the definition of section 2(s) of the Act. In this regard, reference would be made to the case of ***Devender Singh Vs. MC Sanaur, AIR 2011 SCC 2532,*** wherein while examining the ambit and scope of expression 'workman' as used in section 2(s) of the Act, it was observed, as under:

> 'The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s)of the Act.
>
> The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.'

17. The other submission raised on behalf of the management that MCD does not fall within the definition of 'Industry' is without any merit and the same is liable to be rejected for the reason that there are hundreds of cases where industrial dispute against the MCD has been raised by the workers working in such MCDs and in none of cases there is even remotely observation to the effect that office of MCD does not fall within the definition of 'industry' as defined under section 2(j) of the Act. The nine Judges Bench of the Hon'ble Apex Court in the case of ***Bangalore Water Supply & Sewage Board vs. A Rajappan & Ors, 1978(36) FLR 266 (SC),*** have been pleased to consider the scope of the expression 'industry' as defined in section 2(j) of the Act. After taking the entire spectrum of the case law on the subject, the Hon'ble Supreme Court has amplified the scope of the expression industry as defined in the Act and even of hospital, school, educational institutions, MCDs etc has been held to be an industry as defined in section 2(j) of the Act.

18. Now, the main issue before this Tribunal is whether the workmen herein were engaged for seasonal or temporary work by the management for a specific period for cleaning of the drainage during rainy season. There is no clear evidence on the record to show that the workmen were engaged only for 89 days as is suggested on behalf of management rather the evidence on record is not crystal clear that they were in continuous employment of the management since their date of employment in September, 2007.

19. As discussed above, from the evidence of the management it is clear that there was shortage of nala beldars so as to do the work of cleaning of drainage etc. and various letters/correspondence on record to the effect that there is shortage of muster roll workers and M.C.D. is facing great difficulty in properly maintaining the drainage system. Therefore, by no stretch of reasoning, the work of nala beldar which is also partly being performed by regular workmen, can be said to be of seasonal or temporary nature. The M.C.D. is also following the pernicious system of engaging such workmen for 89 days so as to give a brake of one or more days so that the workmen could not claim the benefit of the Industrial Disputes Act as well as regularization. The Hon'ble Supreme Court in case **Haryana State Electronics Development Co. Vs. Miami 2006 SCC (L & S) 1830** held that appointment for 89 days of casual or muster roll workers and their reappointment after a gap of one day is totally unfair labour practice. Such reappointment and repeated termination cannot be held to be bona fide as it is gross violation of various provisions of the Industrial laws.

20. The evidence adduced by the management do not suggest in any manner that workmen were not engaged in the year 2004 or were not performing the job of regular nature. The workmen have also filed copy of the muster roll which contained their names as well as parentage as is clear from Ex.WW1/1, WW-2/1, WW3/1, WW4/1, WW5/1 and WW6/1. These documents further show that the workmen were in the employment of the management. They have also stated having worked for more than 240 days in a calendar year since workmen herein were engaged as casual/ muster roll workers as is clear from the stand taken by the management in the written statement as such it was also incumbent upon the management to have filed the complete records pertaining to their employment and particularly the attendance roll/register so as to show that workmen have worked for less than 240 days in a calendar year.

21. Shri Ajay Joshi, MW-1 has admitted that attendance of the workmen herein were recorded on muster rolls and he had brought some of the muster rolls which were traceable in the office. He further admitted that workman Satender worked from 26.6.2007 to 25.7.2007, Mahadev, Yogesh, Sandeep, Harvir Singh and Babu Lal also worked for 26 days and thereafter, Satender also worked from 26.7.2007 to 25.8.2007. He stated that he has not brought muster rolls for the period 26.11.2007 to 14.12.2007 as the same were not traceable. But merely stating that these documents were not traceable does not absolve the management from its obligation.

22. During the course of arguments, Ld. A/R for the workmen also urged that in order to compute 240 days in a calendar year, number of gazetted holidays, national holidays as well as Sundays in a year, are to be included. In this regard, reliance was placed on cases ***Indian Council of Agriculture Research & Anr vs. Shri Faiyaz; MANU/DE/1935/2013; WP(C)13021-22/2006;*** as well as ***American Express International Banking Corpn. Vs. Management of American Express International Banking Corpn.; MANU/SC/0237/1985; (1985) 4 SCC 71*** wherein it has been held that while computing 240 days for the purpose of Section 25-B of the Act paid holidays including Sundays etc. are to be included in the list of 240 days.

23. No doubt, the initial onus is always upon the workman to prove that he has worked for 240 days in a calendar year and in the case of casual or muster roll workman such a burden would normally be discharged when the workman has entered into the witness box and categorically deposed that he has worked for 240 days in a calendar year with the management. This plea has been taken in ***Director, Fisheries Terminal Division vs. Bhikubhai Meghajibai Chavda, MANU/SC/1810/2009 ; (2010) ILLJ3SC;*** as well as ***A.I.M.S. New Delhi vs. Uddal & Ors. MANU/DE/1005/2014; 2014 (142) DRJ 569.*** In the above two cases, it was observed by the court that normally in a case of daily wagers there is no issuance of letter of appointment and all the material documents, i.e. attendance register, muster roll, salary slips etc. are in the possession of the management. It is expected from the management to produce all the documents so as to appreciate the evidence on record in proper perspective.

24. I am not at all in agreement with the submission raised by the management that workmen herein are seasonal workers for a specific period as such they are covered by the definition of retrenchment as given in Section 2(oo). I fail to understand how the work of nala beldar can be seasonal in nature as regular employees are facing difficulty to cope with the work in as much as extra labour is being engaged on daily wager or muster roll basis, every year. The oral evidence on record adduced by the parties clearly shows that all the workmen herein were performing their duties as nala beldar since the time of their engagement with the management. The law is very clear that it is for the employer to prove that case of the workmen is not covered by the definition of retrenchment so as to attract the applicability of section 2(oo) (bb) of the Act.

25. In ***Director, Fisheries Terminal Division vs. Bhikubhai Meghajibai Chavda, MANU/SC/1810/2009; (2010) 1 SCC 47,*** similar contention was raised that workman was engaged for seasonal work for a temporary period, as such

when the such project of work is over, they would stand retrenched automatically and provisions of section 25-F would have no applicability. This contention was rejected by Hon'ble Apex Court as there is no specific document or agreement on record to show that they were engaged for a specific period i.e. 89 days as is stand taken in written statement by the management. There is nothing in the statement of MW-1 Shri Ajay Joshi that work of nala beldar is purely of seasonal or temporary nature when management has engaged regular workman for the same, more so, when regular workmen are performing similar nature of work which the workmen herein are performing.

26. The net result of the above discussion is that workmen herein are within the definition of 'workman' and they have completed 240 days in a calendar year preceding their termination. The management has admitted having not served them with show-cause notice nor paid one month salary in lieu thereof to the workmen before ordering their termination. It is well settled position in law that in case service of workman is terminated without serving any notice in terms of section 25-F, non-payment of retrenchment compensation or one month salary in lieu of such notice, action of employer would be termed as totally illegal.

27. Having said so, now, the other question is as to what relief the workmen are entitled. Since the termination of the job of the workmen herein is totally illegal and in violation of section 25-F of the Act, as such the question of their reinstatement has to be considered in the light of the facts whether workmen are out of employment since termination.

28. It is apposite to mention here that earlier Hon'ble Apex Court has articulated a view which is reflected in several judgments that if termination of a workman is found to be illegal, the relief of reinstatement with back wages would follow. However, in recent past, there is change in this trend and now in several cases a view has been taken that relief by way of reinstatement with full back wages is not automatic.

29. Though it has been averred by the workmen in their affidavits as well as statement of claim that they are not gainfully employed with any other management yet this court has to keep in mind that they were not regular employees of the management nor they have vested right to continue in said employment. The ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wager worker and where the termination is found illegal because of procedural defect namely in violation of Section 25-F reinstatement with back wages is not to be automatic. Instead the workman would be given monetary compensation which will meet the ends of justice. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization.

30. While dealing with reinstatement, the court has to take in mind the nature of the post, duration of the engagement, nature of appointment, availability of the post, delay in raising industrial dispute and whether the appointment was in accordance with rules or not. The workmen herein were admittedly holding temporary posts of daily wager. They have worked with the management for less than three years. In such circumstances, this court is of the considered opinion that instead of full back wages, an amount of 50% back wages appears to be just and reasonable.

31. In view of the legal position discussed above, this court is of the firm view that claimants are entitled to 50% of the back wages instead of full back wages as well as reinstatement with continuity of service as action of the management in the case on hand, is totally in violation of the provisions of Section 25-F of the Act. In case, the amount of 50% back wages is not paid by the management within one month from the date of publication of the Award, in that eventuality, the workman shall be entitled to recover the same with an interest @ 9% per annum from the date of publication, till its realization. Let a copy of this award be placed on the files of ID Nos.125/2011 to 132/2011 and 169/2011. Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dated : 1.11. 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2906.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, एसडीएमसी, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 230/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.12.2017 को प्राप्त हुआ था।

[सं. एल-42011/123/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2906.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 230/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner, SDMC, New Delhi and others and their workman, which was received by the Central Government on 01.12.2017.

[No. L-42011/123/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 230/2015

Shri Anand Kumar & Others,
Represented by the President,
MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House,
New Delhi – 110 001 …Workman

Versus

The Commissioner,
South Delhi Municipal Corporation,
9th Floor, Civic Centre, Minto Road,
New Delhi – 110 002

The Commissioner,
North Delhi Municipal Corporation,
4th Floor, Civic Centre, Minto Road,
New Delhi – 110 002

The Commissioner,
East Delhi Municipal Corporation,
Udyog Sadan, Plot No.419,
Patparganj Industrial Area, Shahdara,
New Delhi 110 002 …Management

AWARD

A reference under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) was received from the Central Government, Ministry of Labour and Employment for adjudication vide letter No.L-42011/123/2014-IR(DU) dated 27.10.2015 for adjudication of an industrial dispute with the following terms:

> Whether the action of the management of MCD in not granting the regular appointment to the contract workers appointed on compassionate grounds as per list enclosed is fair and legal? If not, to what relief the workmen are entitled to and from which date?

2. Claim statement was filed by the claimants with the averments that they were employed on compassionate grounds as Field Worker, details of which are as under:

Sl. No.	Name (S/Shri)	Father/Husband Name	Date of Appointment on Compassionate grounds	Zone
1.	Anand Kumar	Late Suresh Chand	07.08.2009	Central
2.	Rakesh Kumar	Late Net Ram	23.07.2009	Central
3.	Smt. Meenu	Late Ashok Kumar	06.08.2009	Central

4.	Kripal Singh	Late Shiv Lal	22.10.2009	Central
5.	Sunil Kumar	Late Shyam Lal	27.10.2009	Central
6.	Devender Kumar	Late Dhanu	23.07.2009	Central
7.	Vinod Kumar	Late Tejpal Singh	30.07.2009	Central
8.	Dharmaveer	Late Raju	28.07.2009	Central
9.	Praveen Kumar	Late Bal Kishan	23.07.2009	Central
10.	Pramod Kumar	Late Dharamvir Singh	08.10.2009	Central
11.	Hari Om Bhati	Late Sripal	28.07.2007	Central
12.	Bittu	Late Sunder Lal	14.05.2010	Shahdara Sough
13.	Ravi	Late Tejpal	08.10.2009	Shahdara South
14.	Smt.Bhawana Rajput	Late Anil Rajput	08.10.2009	Shahdara South
15.	Premveer	Late Rattan Singh	30.03.2010	Sadar Paharganj
16.	Ramesh Kumar	Late Randhir Singh	11.11.2009	Sadar Paharganj
17.	Vijender Singh	Late Mange Ram	10.07.2009	South
18.	Pawan Yadav	Late Bhola Ram	22.10.2009	Civic Centre
19.	Dharmender	Late Babu Prakash	07.10.2009	West

3. The deceased were working on regular basis as Field Workers in the time scale and they are all entitled to be appointed on compassionate grounds on regular basis in the time scale but the management is paying them only minimum wages fixed for unskilled labour. The action of the management is illegal, arbitrary and in violation of the policy of equal pay for equal work. The management follows the policy of Government of India/Government of NCT of Delhi. Hon'ble High Court of Delhi in the matter of MCD Vs Rajesh has held that appointment has to be made on compassionate grounds if their parents were working on regular basis. In the present case, the parents/spouse of the claimants connected with the dispute were working on regular basis as Field Workers in Malaria Department. The claimants herein are also doing the same work as their deceased parents/spouse. Denial of regular appointment in the time scale only smacks of exploitation and denial of equality as other similarly situated persons were employed by the management in regular time-scale. The Management has also obtained affidavit from the claimants herein not to claim regular pay scale, which is against the policy of equal pay for equal work as adopted by themselves. Finally, it has been prayed that that regular pay scale with proper grade pay in the category of Field Worker as semiskilled worker from the date of their appointment on compassionate grounds.

4. Statement of defence was filed by East Delhi Municipal Corporation taking various preliminary objection, inter alia of non-service of demand notice, non production of valid documents, regularization being policy matter depending on availability of vacant post etc. Only 3 out of the 19 workmen, i.e. workmen mentioned at serial Nos. 12, 13 and 14, are presently working under the control of East Delhi Municipal Corporation. The present claim has not properly raised by the union as MCD General Mazdoor Union is only authorized to represent workmen of Horticulture Department of East Delhi Municipal Corporation, while the above three claimants are working with Health Department. Only 5% of the vacant posts of regular filed workers are to be selected out of the enlisted dependents of regular deceased employees under compassionate grounds. Dependents of the deceased employees are to be engaged on 100% basis only for contractual field workers up to 5 years as per office order dated 16.12.2008 and subsequently as per order dated 27.05.2014, contractual field workers can be engaged upto a maximum of 10 years, subject to yearly satisfactory work and conduct report. Such contractual field workers are getting emoluments of minimum wages passed by LWS/East Delhi Municipal Corporation as unskilled technical grass root worker. The claimants have voluntarily applied for field worker post and cannot claim regular pay scale of regular field worker. The management has denied the other material averments contained in the statement of claim. Hence, the claim may kindly be dismissed.

5. Statement of defence has also been filed by South Delhi Municipal Corporation, who have taken various preliminary objections, i.e. non-service of demand notice, union having no locus standi to institute the present claim etc. Management has admitted the fact.

6. Since none had appeared on behalf of North Delhi Municipal Corporation and South Delhi Municipal Corporation, the said managements were proceeded ex-parte on 02.01.2017.

7 Rejoinder was filed on behalf other claimant wherein the facts stated in the claim statement have been reiterated and the material averments contained in the statement of defence have been denied.

8. Based on the pleadings of the parties, this Tribunal, vide order dated 08.09.2015, framed the following issues:

(i) Whether the reference is not legally maintainable in view of the various preliminary objections?

(ii) In terms of reference.

9. Claimant in order to prove his case against the management examined himself as WW1 and Shri B.K. Prasad as WW2. WW2 relied on documents Ex.WW2/1 to Ex.WW2/4. Management, in order to rebut the case of the claimant, examined Shri Nihar Ranjan Das as MW1 and Shri L.R. Verma as MW2 and they relied on documents Ex.MW1/1 to Ex.MW1/4 and Ex.MW2/1 respectively.

10. I have heard Shri B.K. Prasad, A/R for the claimant, Ms.Savita Chauhan, A/R for South Delhi Municipal Corporation, Shri Narender Singh, A/R for East Delhi Municipal Corporation and Shri Anand Sagar, A/R for North Delhi Municipal Corporation.

Issue No.(i)

It was strongly urged on behalf of the management by Shri Anand Sagar that the claimants had not sent demand notice to the management regarding their compassionate appointment of the claimant herein, who have claimed appointment after the demise of their father/husband. Secondly, it was also urged that there was no proper espousal by the union nor there is acceptable evidence on record to prove the same.

11. In the present case, admittedly espousal of the case took place on 27.07.2012 vide Ex.WW2/2. In the present case, Shri B.K. Prasad, A/R for the claimant, appearing as WW2, filed his affidavit Ex.WW2/A. It is clear from perusal of his affidavit that he is the President of the MCD General Mazdoor Union and the case of the claimants was discussed in the general meeting of the union.

12. Courts have gone to the extent of observing that issuance of demand notice is not essential for raising an industrial dispute and said notice can even be given orally to the management. This view has been taken in Workmen of MCD vs. MCD in WP(C) 13023/2005 decided on 06.08.2007 wherein above view was taken after putting reliance upon the case of Shambunath Goyal vs Bank of Baroda (1978 (2) SCR 793), wherein it was observed as under:

> "A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the disputes or difference is connected with the employment or non-employment or the terms of employment or, with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute Would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine ,qua non, unless of course in the case of public utility service, because s. 22 forbids going on strike without giving a strike notice. The key words in the definition of industrial dispute are 'dispute' or 'difference'. What is the connotation of these two words. In Beetham v. Trinidad Cement Ltd.(1). Lord Denning while examining the definition of expression 'Trade dispute' in s. 2(1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed:
>
> > "by definition a 'trade dispute' exists whenever a 'difference' exists and a difference can exist long before the parties become locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening".
>
> Thus the term 'industrial dispute' connotes a real and Substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the Undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section."

13. In fact, there is no precise definition of espousal under the law and it simply means that the dispute of an individual workman is adopted by the union as its own dispute or majority of workmen present has given support to the cause of the individual workman. It was held in the case of Workmen Union vs Industrial Tribunal (1994 (68) FLR 710 Calcutta) that once a dispute is referred to the Tribunal by the appropriate Government, presumption of it being an industrial dispute is there and court can draw inference and legitimately hold that there has been proper espousal of the case through the union.

14. The other contention of the management is to the effect that the case of the claimant herein is not covered within the definition of 'workman' as defined under Section 2(s) of the Act. It is clear from the pleadings of the parties that the deceased were engaged as Field Workers by the management. Contention of the management primarily is to the effect that compassionate appointment as per norms is given only to the legal heirs of regular employees and not to casual or daily wager employees who are engaged temporarily on contractual basis. Learned A/R appearing on behalf of the claimant invited the attention of the Court to Ex.WW2/4 which deals with the compassionate appointment to the widows/sons/daughters of the deceased Government servants etc. It is clearly provided in the scheme of compassionate appointment that for the purpose of these instructions, government servant means government servants appointed on regular basis and not the ones working on daily basis or casual or apprentice or adhoc basis or contract or re-employment basis.

15. Admittedly, the present case is for compassionate appointment filed by the claimants whose father/husband was a workman Even if it is held that the father/husband of the claimants were daily wagers or a contractual workmen or casual employees engaged by the management, same would also fall within the definition of workman as held in Devender Singh Vs. Municipal Council Sanaur (AIR (2011), wherein it was observed as under:

> 'The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s)of the Act.
>
> The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

16. In Municipal Employees Union case (supra), it was held as under:

> "6. The expression 'Industrial dispute' is defined in Section 2(k) of the Industrial Disputes Act which is extracted below:
>
> > (k) 'Industrial dispute' means any dispute or difference between employers and employees or between employers and workman or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person:
>
> From the above definition of 'industrial dispute,' it is clear that even a dispute between an employer and his workmen which is connected with the non-employment of any person can be an industrial dispute. The beneficiary of the claim need not be a workman of the employer at the time of raising the dispute. A dispute can be raised by the workmen of the employer even in respect of the non-employment of any person who is not his workman at the material time. In the judgment in Kaya Construction Company (Pvt.) Ltd. v. Its Workman reported in AIR 1959 SC 208, the Hon'ble Supreme Court has pointed out that it is well settled that a dispute which validly gives rise to a reference under the Industrial Disputes Act need not necessarily be a dispute directly between an employer and his workmen and that the definition of the expression ' industrial dispute' is wide enough to cover a dispute raised by the employer's workmen in regard to the non-employment of others who may not be his workmen at the material time.

17. Hon'ble High Court in the case of Municipal Employees Union vs. Secretary (Labour) (1999) LLJ 192) almost under similar situation dealt with the question of compassionate appointment under Government scheme to the dependents of even daily wagers who have died in harness. In the above case, deceased workman was working with MCD when he died on 15.02.1993. His family comprised of his old parents and a younger brother Shri Badley Ram. After the death of the workman Shri Sansar Pal his brother Shri Badley Ram requested MCD to give him compassionate appointment. Conciliation proceedings also ended in failure as management took the sand that his case is not covered by the scheme for compassionate appointment. It was also the stand of the management that the present matter is not covered by Industrial dispute as defined under Section 2(k) of the Act. Hon'ble High Court relied upon the case of Delhi Mazdoor Workers Union vs management of MCD decided on 26.11.1998 wherein Hon'ble High Court has taken a view that definition of industrial dispute is wide enough to cover a dispute of the present nature. It was observed that definition of industrial dispute as contained in section 2(k) of the Act is wide enough to cover the dispute of the workman relating to the non-employment of other person. Beneficiary of the claimant need not be a workmen of the employer at the time of raising the dispute. Dispute can be raised by the workman of the employer even in respect of non-employment of any person who is not a workman at the material time. While making the aforesaid observations, reliance was also placed by the Hon'ble High court upon the case of Kays Construction Company Pvt. Ltd. Vs Workmen (1958 II LLJ 60). Thus a dispute of the present nature where benefit of employment on compassionate grounds is being claimed in respect of employment of deceased husband by his widow, such a dispute is duly covered by the definition of workman as contained under the Act.

18. Hon'ble Apex Court in the case of DDA vs, Sudesh Kumar (2009) III SC 96 again dealt with the same question. In the said case, employee was working in DDA and expired on 03.04.1990. His widow applied for appointment of her son on compassionate grounds with DDA. The application was rejected on the ground that at the time of the death of late Shri Rajender Kumar, he was working on work charge post and he had no right of employment with DDA. However, Hon'ble High Court did not find any merit in the submission of the management and contention of the management that matter is also not even covered by industrial dispute was rejected with equal vehemence by the court, by holding as under:

> 5. We find no merit in the submission of the learned counsel appearing for the appellant. The term 'industrial Dispute' is defined under section 2 (k) of the Act, which reads as follows:
>
> > '2 (k) Industrial Dispute means any dispute between employers and employers or between employers and workman or between workman and workman which is connected with the employment or non employment or the terms of employment or with the conditions of labour of any person.
>
> 6. Section 2(k) came for consideration before the Supreme Court in Workmen of Dimakuchi Tea Estate vs. Management of Dimakuchi Tea Estate (AIR 1958 SC 353 wherein it was held that having regard to the scheme and objects of the Act, and its other provisions, the expression 'any person ' in section 2 (k) of the Act must be read-subject to such limitations and qualifications as arise from the context; the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be One in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a 'workman' within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest. Where the person was not a workman as he belonged to the medical or technical staff-a different category altogether from workmen of the establishment had no direct, nor substantial interest in his employment or non-employment, and it cannot be said, even assuming that he was a member of the same Trade Union, that the dispute regarding his termination of service was an industrial dispute within the meaning of s. 2(k) of the Act.

19. In the above case, reference was also made to the judgement of Apex Court in Mukand Limited Vs. Mukand Staff Officers Association (AIR 2004 SC 3905). In the said case, it was held that the Tribunal can deal with a dispute which is not directly related to workmen but any person including non-workmen.

20. There is also issue pertaining to maintainability of the petition filed by the claimants. As is clear from the various judgements, discussed above, claim for compassionate appointment can always be filed by dependent family members or kith and kin of the deceased in accordance with law. As such, it cannot be said that the claim filed by the claimants herein, who happen to be son/widow of the deceased is not legally maintainable. It is a matter of common knowledge that in majority of the cases, applications are normally filed by sons/widows of the deceased for suitable employment as they do not have sufficient income to make both ends meet. In Delhi MCD Workers Union vs Management of MCD (1999) 4 Del 608), plea was taken by the management that reference is not maintainable as such the dispute does not fall within the definition of 'industrial dispute' as defined under the Act. It was held by Hon'ble High Court that dispute relating to compassionate appointment raised by the son of deceased employee was an industrial dispute within the meaning of the said section. Therefore, contention of the management that such dispute is not cognizable by the Industrial Adjudicator is devoid of any merit and the same is liable to be rejected at the threshold. Hence issue No.(i) is decided in favour of the claimant and against the management.

Issue No. (ii)

21. The foremost issue before this Tribunal is whether the claimants are entitled for relief of compassionate appointment. Admittedly, the claimants herein are the sons/ widow of the deceased employees. It is apparent from perusal of record that they have filed application before the management for suitable appointment. In such circumstances, now the only question which requires to be considered by this Tribunal is whether they are to be granted employment as per the existing norms/policies. Learned A/R for the management strongly urged that since claimants herein were not permanent employees or a regular employees. As such, there is no policy or scheme of the management, which entitles the sons/widows of the deceased employee to be considered for compassionate appointment. In this regard, learned A/R for the management invited attention of the court to the Establishment manual which clearly provides that dependents for regular Government servants are to be considered for compassionate appointment. Learned A/R for the management also invited attention of the court to Ex.MW1/1 which is circular of the

management which deals with welfare measures for the dependents of deceased regular municipal employees. It is clear from the overall examination Ex.MW1/1 that in clause IV age limit of the person seeking employment is restricted to 32 years on the date of application. All these cases are required to be placed before the Committee constituted for this purpose, who is required to take a decision in this regard within a period of one month .

22. Per contra, Shri B.K. Prasad urged that circular dated 16.12.2000 does not have force of law and these are merely guidelines to be followed in the case of compassionate appointment. It was also urged that the case of the claimant herein is otherwise covered by the policy as family of the deceased had no income at the time of filing application and circular Exm.MW1/1 is not applicable to the applicant herein as the same pertains to those cases which were pending at the time when the question of compassionate appointment arose. Shri Prasad further proceeded to argue that in the present case claimants would have been made regular as many of their juniors were already regularized . It is now appropriate to refer to the statement of Dr. Nihar Ranjan Das, who is Municipal Health Officer, East Delhi Municipal Corporation. He has deposed in para 3 of his affidavit Ex.MW1/A that regularization of services of any workman is a plicy matter depending upon availability of post and requirement and workman cannot claim regularization as a matter of right. To my mind, there is no merit in the pleadings raised by the management. Question of availability of post is not the issue before this Tribunal inasmuch as this post was already there on account of death of employees and the only question is whether in the event of death of an employee, his next of kith and kin is to be considered for appointment against that sanctioned post.

23. As discussed above, Hon'ble Apex Court specifically held in the case of Delhi Development Authority vs. Sudesh case (supra) that compassionate appointment cannot be denied to dependents of deceased workmen, on the grounds of age etc. nor does it lie in the mouth of the management tosay that there is no post available with the management.

24. Statement of MW2 Shri Pramod Kumar is not of much help to the case of the management. He has admitted that the claimants at serial Nos.1 to 11, 17 and 19 as mentioned in para 2 of the statement of claim are employees of South Delhi Municipal Corporation and fathers of these claimants were regular malaria beldars, who are now known as field workers. He has further admitted that the claimants have not been appointed on regular basis. He has also made a vital admission that no contractor is involved in the engagement of claimants. He has further stated that notification/'regulations issued by Central Government is applicable to Municipal Body. He has further again made a vital admission that the House has no powers to frame any policy against the policy of the Central Government, in which next of dependent/kith of the deceased employee is to be given regular employment. Even the management has admitted that the claimants performing the same duties which are being performed by other regular employees. He has further admitted that the claimants are paid less wages than the regular workers. It has been held by Hon'ble Supreme Court in the case of Surinder Singh vs. Engineer-in-Chief, CPWD (AIR 1986 SC 1976) decided on 17.01.1986, dealt with the question of equal pay for equal work in respect of daily rated workmen performing same duties which was being performed by their regular counterparts in the department. After discussing the ambit and scope of Article 14 of the Constitution of India, it was held that there should be equal pay for equal work of equal value. It makes no difference whether such workmen are employed against sanctioned post or not so long as they are performing the same duties. They must receive same salary and conditions of service must also be the same. Hon'ble Supreme Court also expressed anguish that most of the workers are kept in service on temporary basis as daily wage workers without their service being regularized, which is completely against the spirit of Article 14 of the Constitution of India.

25. Learned A/R for the management could not cite even a single authority of Hon'ble High Court or any other High Court whether compassionate appointment was denied to the dependents of the deceased workmen purely on the ground of age. Moreover, in view of the ratio of law in DDA Vs.Sudesh case (supra), it is clear from the observations made by the Hon'ble High Court that relief of compassionate appointment normally is not to be denied to the widow of deceased employees who was serving the organization for considerable period.

26. In the Establishment and Administration manual also, there is no upper age limit prescribed under the Scheme. Rather, power has been given to the Government to relax the upper age limit, if any. Not only this, as per para 9 of the scheme, even if a widow gets married later on and gets appointment on compassionate grounds, she will be allowed to continue in service even after remarriage. Clause 16(e) of the above manual also lays down that requests for compassionate appointment consequent on death or retirement on medical grounds of Group 'D' staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.

27. As a sequel to my detailed discussion made hereinabove, it is held that the claimants herein, are entitled to regular appointment on compassionate grounds. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 23, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2907.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, एमआई कक्ष, जिला जनरल आईटीबीपी फोर्स, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 106/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.12.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2907.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 106/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the M/s. MI Room, District General ITBP Force, New Delhi and their workmen, which was received by the Central Government on 01.12.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1 : ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 106/2015

Shri Vijender Kumar S/o Shri Ram Kumar
C/o General Mazdoor Union,
T-43, Karampura,
New Delhi …Workman

Versus

M/s MI Room, RK Puram,
District General ITBP Force,
(CAPFS), 9-A, East Block,
Sector 1, R.K. Puram,
Ministry of Home Affairs/Government of India,
New Delhi 110 066 …Management

AWARD

This claim has been directly filed by Shri Vijender Kumar (in short the claimant) with the averment that he was appointed by MI Room RK Puram, District General ITBP Force (in short the management)on the post of sweeper in October 2009 and his last drawn wage was Rs.7000.00 per month. He was not issued any letter of appointment by the management. He was performing his work sincerely and honestly as well as satisfactorily and he did not give any chance of complaint to the management. Management used to mark attendance of the claimant in muster roll and also paid wages to him on wages register. All these documents are in possession of the management. Management was not providing weekly off, leaves, bonus, overtime, HRA, medical facility, PF, appointment letter, minimum wages to the claimant. Claimant used to demand the above facilities from the management but they did not pay any heed to the request of the claimant.

2. It is the case of the claimant that the management in order to get rid of him illegally terminated his services on 13.11.2004 without any rhyme or reason and the management has also not paid earned wages for October 2014. No show cause notice was issued to the claimant nor any domestic enquiry was conducted against the claimant, which is gross violation of provisions of Section 25-F the Industrial Disputes Act, 1947(in short the Act).

3. Claimant has also filed complaint before the Assistant Labour Commissioner on 27.10.2014 against the management. Labour Inspector had visited the office of the management requesting them to take back the claimant on duty but the management had not reinstated the claimant. Management has also not appeared before the Conciliation Officer, resulting in failure of conciliation proceedings. Thereafter, the claimant has filed the claim directly before this Tribunal praying reinstatement in service with full back wages.

4. Claim was contested by the management who filed written statement to the statement of claim and took various preliminary objections, alleging that the claimant is guilty of perjury for filing a false claim and also that Hospitals and Dispensaries do not fall within the definition of 'industry' as defined under section 2(j) of the Act. Moreover, ITBP is an Armed Force of the Union of India and does not come within the purview of the provisions of the Act. On merits, it has been denied that the claimant was appointed by the management on the post of sweeper in October 2009 against a salary of Rs.7000.00 per month. In fact, the claimant was engaged as casual labour on daily wages many times by the management. Therefore, there was no question of issuance of appointment letter to him. It is also denied that the claimant used to work sincerely and honestly. He used to visit the hospital three times daily for cleaning and sweeping but the claimant used to absent without prior intimation and had stopped coming to the management on his own without prior intimation. It is also denied that the management used to mark attendance of the claimant in the muster roll . There is no question of weekly off, bonus, HRA etc. as the claimant was simply engaged on casual basis. Management has denied the other averments made in the statement of claim.

5. Claimant filed rejoinder to the written statement filed by the management reasserting the stand taken in the claim statement and denying the material averments contained in the written statement.

6. Against this factual background, this Tribunal vide order dated 20.01.2016 framed the following issues:

(i) Whether the workman is entitled for reinstatement as well as payment of wages for May 2014 and October 2014?

(ii) Whether the petition is not maintainable in view of the preliminary objections?

7. Claimant, in order to prove his case against the management examined himself as WW1 whose affidavit is Ex.WW1/A and he has also tendered in evidence documents Ex.WW1/1 to Ex.WW1/5. Management, in order to rebut the case of the claimant, examined Shri Atul B Chandola as MW1 and tendered his affidavit Ex.MW1/A and documents Ex.MW1/1 to Ex.MW1/10.

8. I have heard Shri Ajit Singh, A/R for the claimant and Shri Raksh Pal Singh, A/R for the management.

Findings on Issue No.2

9. This issue is being taken up initially for the purpose of discussion as it is legal in nature. Though in the written statement, objection has been taken by the management that the claim is not legally maintainable before this Tribunal for the reason that services of ITBP Force does not fall within the purview of the Act. It is apposite to mention here that the claimant was admittedly engaged by the management on casual basis as is clear from the stand taken in the written statement. Pleadings on record further shows that he was doing work of sweeping in the premises of the management continuously since 2009. Claimant has also filed certificate Ex.WW1/4 which clearly shows that the claimant was working as safaiwala (Camp Orderly) since the last four years in the MI Room, ITB Police and this certificate, in fact, is issued by the Medical Officer, Directorate Medical ITBP Force, New Delhi.

10. This certificate clearly proves that the claimant was in the employment of the management though on casual basis. There is no merit in the contention of the management that since the claimant was engaged in casual manner or casual daily wager, as such, he does not fall within the definition of 'workman'. In this regard, it is appropriate to the case of ***Devender Singh Vs. MC Sanaur, AIR 2011 SCC 2532,*** wherein Hon'ble Apex Court had the occasion to deal with the meaning of the expression 'workman' as used in Section 2(s) of the Act. In para 13 and 14 of the judgement, while refuting the contention of the management that casual or temporary or part time worker do not fall within the definition of 'workman' observed as under:

> 'The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s)of the Act.
>
> The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

11. However, Apex Court has also dealt with the meaning of the expression 'industry' as defined in Section 2(j) of the Act in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa 1978 (36) F.L.R. 266 dealt at length with the ambit and scope of expression industry as defined in section 2 (J) of the Act and held as under:

(a) Where a complex of activities, some of which qualify for exemption, others not involves employees on the total undertaking some of whom are not "workmen" as in the University of Delhi case (supra) or some departments are not productive of goods and services if isolated, even then, the predominant

nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (supra), will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or Statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then can be considered to come within section 2 (j).

(d) Constitutional and competently enacted legislative provisions way well remove from the scope of the Act categories which otherwise may be covered thereby.

(e) We overrule Safdarjung (supra), Solicitors' case (supra), Gymkhana (supra), Delhi University (supra), Dhanrajgirji Hospital (supra) and other ruling whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha (supra) is hereby rehabilitated."

12. After pronouncement of the above judgement, trend of the courts is very clear that any activity as falling within the definition of 'industry' has been held to be amenable to the jurisdiction of the Hon'ble courts. Hon'ble High Court in the case of AIIMS Vs. Uddal (2014 (142) DRJ 569 held that All India Institute of Medical Sciences is an industry within the meaning of section 2(j) of the Act. Since in the case on hand management in the written statement as well as affidavit of MW1, Ex.MW1/A has clearly admitted that he was engaged on several occasions on casual basis and has been paid salary for the period during which he has worked. It, thus, militates against the submissions being raised on behalf of the management that the claimant herein is not a workman. Learned A/R for the management could not city any authority to the contrary so as to support his submission or strand taken in the preliminary objections of the written statement.

13. As the claimant herein has also approached the Assistant Labour Commissioner/Conciliation Officer before filing the present claim petition against the management. It is clear from perusal of Ex.WW1/1 that the claim was filed before the Conciliation Officer after termination of the job of the claimant herein. To the similar effect is the document Ex.WW1/2 which shows that General Mazdoor Union was approached by the claimant herein when he was terminated from the services on 13.11.2013 without serving any notice or holding any enquiry.

14. Perusal of Ex.WW1/3 also shows that ITBP is being run for dispensing various services, including dispensing medicines for ITBI patients and for keeping ITBP parities under observation. In order to maintain hygiene casual labours were engaged for cleaning on daily basis for a period fo 1 week, 15 days, 30 days, 70 days etc. as per the requirement. Though it is mentioned in the letter that it is not regular appointment, but case of the claimant is very clear that he is in continuous employment since 2009.

15. Shri Atul B. Chandola, in his cross-examination, has admitted that the claimant was appointed in the year 2010 as sweeper on contract basis on daily basis from October 2009. He has further averred that he was not issued any letter of appointment. He has made a vital admission that the conduct of the claimant was satisfactory and the work being performed by the claimant was regular in nature. Admittedly, management has not filed any record pf payment of wages to the claimant or extract of attendance register etc. Therefore, it is both reasonable and legal say that the claimant was in the service of the management after October 2009. In view of the legal position discussed above, it is held that the claim filed by the claimant herein before this Tribunal is legally maintainable.

Findings on Issue No.(i)

16. Now, the main question which arises for determination is whether the claimant is entitled for reinstatement as well as payment of back wages for May 14 and October 2014. It is clear from perusal of the statement of claim as well as affidavit filed by the claimant that he was engaged as sweeper in the month of October 2009 and his salary was Rs.7000.00 per month. It is clear from the statement of Shri Atul B Chandola that the claimant was engaged on casual basis as per requirement from time to time by the management. It is also admitted case that he has been paid wages and stand of the management is that he was not a regular employee, as such, there is no question of his reinstatement when has virtually abandoned the job himself.

17. Though the management has taken the plea that the claimant has abandoned the job, yet it is clear from evidence on record that neither notice was served upon the claimant when he stopped coming for duties nor any domestic enquiry was held by the management against the claimant. Since certificate Ex.WW1/4 clearly shows that the claimant has been serving the management as safaiwala for the last 4 years and management has also not filed any record pertaining to extract of attendance register and vouchers relating to payment of salary to the claimant. As such, this Tribunal is also entitled to draw adverse inference against the management. Claimant has specifically denied that he has abandoned the job on 03.09.2013.

18. Law is fairly settled that initial burden to prove that the claimant has abandoned the job and did not attend his duties is also upon the management who is required to serve notice upon the workman seeking his explanation as to why his services be not dispensed with on account of abandonment or absence from duties. It has been held in the case of Narain Singh vs. State of Himachal Pradesh (2017) LLR 647 that holding enquiry in this respect before terminating services of a workman is necessary in order to ensure compliance of principles of natural justice. Similar view has been taken by the Hon'ble Apex Court in the case of D.K. Yadav Vs. JMA Industries Limited (1993) Legal Eagle (SC) 458 wherein it has been held that order of termination of service of an employee visits with civil consequences of jeopardizing not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee, fair play requires that a reasonable opportunity to put forth his/her case must be given.

19. It is not the case of the management that the claimant has not pleaded 240 days in a calendar year so as to not attract provisions of Section 25-F of the Act. It is now well settled position in law that before ordering termination of services of a workman, management is required to serve one month notice or one month salary in view of such notice failing which action of the management would be termed as totally arbitrary and illegal. In the case on hand also, admittedly neither one months' notice was served upon the claimant nor any salary in lieu of such notice was paid to the claimant. Management had not conducted any formal enquiry upon disappearance of the claimant. In such a situation, action of the management in terminating services of the claimant herein orally cannot stand the scrutiny of law, as such, the same is held to be totally illegal and void.

20. Now, the residual question before this Tribunal is whether the claimant herein is entitled for reinstatement with back wages. It has been held by Hon'ble Apex Court in number of cases that if the termination of workman is illegal, rule of reinstatement with back wages would follow. However, in the recent past, there is a change in this term and now in most of the cases, view has been taken that reinstatement with back wages is not automatic even though the termination of the workman is in contravention of the prescribed proceedings. It would depend upon the facts and circumstances of each case whether reasonable compensation instead of reinstatement is to be paid.

21. While dealing with reinstatement, the court has to keep in mind the nature of the post, duration of the engagement, nature of appointment, availability of the post, delay in raising industrial dispute and whether the appointment was in accordance with rules or not. The workman herein was admittedly holding temporary posts of daily wager. They have worked with the management for around five years. Though it has been averred by the workman in his affidavit as well as statement of claim that he is not gainfully employed with any other management yet this court has to keep in mind that they were not regular employees of the management nor they have vested right to continue in said employment. The ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wager worker and where the termination is found illegal because of procedural defect namely in violation of Section 25-F reinstatement with back wages is not to be automatic. Instead the workman would be given monetary compensation which will meet the ends of justice. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization. Since in the case on hand, claimant was admitted engaged as casual labour and claimant being able-bodied person cannot be said to be sitting idle at home. It is legitimate to presume that he was doing something to make both ends meet.

22. Having said so, now the residual question is whether the claimant is entitled for reinstatement with back wages. Question as to whether the workman whose services have been dispensed with was terminated/retrenched in contravention of provisions of Section 25-F of the Act is no longer res integra as this point has been adjudicated by the Hon'ble Apex Court as well as various Hon'ble High Courts in a number of cases. In the case of Deepali Gundu Surwase vs. Kranti Junior Adyapak Mahavidyalaya (D.Ed) and others (2013 Lab.I.C. 4249), Hon'ble Apex Court held as under:

> 'Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not

employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.'

23. No doubt, Hon'ble Apex Court in similar cases has observed that there are number of factors which are to be taken into consideration while considering question of full back wages or only payment of retrenchment compensation or reasonable compensation. Such factors which could be culled out from the various judgements are the length of service, whether claimant was doing work of regular or perennial in nature or was just employed for a specific work which is of temporary or seasonal nature, whether there is no delay in making reference or approaching this Tribunal by the claimant, whether the workman was working against sanctioned post or work is still subsisting so as to consider the question of re-employment of the workmen.

24. Since claimant was not working against a regular post and is an able bodied person who must be doing something to make both ends meet, in such circumstances, this court is of the firm view that claimants are entitled to 50% of the back wages instead of full back wages as well as reinstatement with continuity of service is just and reasonable so as to meet the requirements of principles of natural justice as action of the management in the case on hand, is totally in violation of the provisions of Section 25-F of the Act. An award is, accordingly, passed. Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dated : November 24, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2908.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, केंद्रीय आयुध डिपो का प्रबंधन, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 75/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.12.2017 को प्राप्त हुआ था।

[सं. एल-14011/07/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2908.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 75/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Central Ordnance Depot, New Delhi and their workman, which was received by the Central Government on 06.12.2017.

[No. L-14011/07/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI

ID No. 75/2014

Shri Rupesh Kumar
S/o Late Shri Om Parkash,
Through General Secretary, Delhi Labour Union,
Agarwal Bhawan, G.T.Road,Tis Hazari
Delhi-110054 …Workman

Versus

The Management of Central Ordnance Depot,
Delhi Cantt.
New Delhi – 110010 …Management

AWARD

1. In the present case, reference was received from Government of India, Ministry of labour, New Delhi, vide Order No. L-14011/07/2014-IR/(DU) dated 05.08.2014, terms of which are as under:-

> "Whether rejection of the name of Shri Rupesh Kumar son of late Om Prakash for the purpose of appointment on compassionate grounds by the board of Central ordnance Depot Delhi Cantt. on various grounds is just, fair and legal? If not, what relief the workman concerned is entitled to?"

2. Both the parties were put to notice and Shri Rupesh Kumar, workman filed statement of claim before this Tribunal with the averments that Shri Om Prakash, father of the workman herein, was working as Fireman in Delhi Fire Services and was posted at Delhi Cantt. His father expired on 09.11.2004 and at that time, he was in regular service of the management. Shri Om Prakash, father of the workman was survived by the following members :-

(i) Smt. Raj Rani, widow aged 55 yrs, who is unemployed

(ii) Ms. Devi, widowed daughter aged 28 yrs. and is unemployed

(iii) Shri Rupesh Kumar, Son aged 26 yrs. who is married and is unemployed

3. The workman approached the management a number of times for getting employment after the death of his father on compassionate grounds but of no use. Thereafter legal notice dated 17.07.2007 was served upon the management and matter was also referred to Assistant Labour Commissioner wherein industrial dispute was raised regarding appointment on compassionate grounds. The management filed reply to the claim of the workman on 05.04.2010 and conciliation between the parties failed resulting in the failure report dated 22.8.2010. The claim of the workman for appointment on compassionate grounds was also rejected by Central Ordnance Deport vide order dated 28.06.2011.

4. The management contested the claim of the workman by filing written Statement wherein various preliminary objections inter alia of locus standi, maintainability etc. were taken. However, it was admitted that Shri Om Parkash was employee of Central Ordnance Depot, Delhi Cantt. who died on 9.11.2004. Thereafter, workman Rupesh Kumar had applied for service on compassionate grounds and his name was considered for thrice for Group D post by the Annual Board of Officers held in the year 2005-06, 2006-07 and 2007-08. However, his name was not recommended for appointment by Annual Board of Officers due to comparatively low merit and availability of the vacancy for the post. The management has denied other averments made in the statement of claim.

5. The workman filed rejoinder wherein he reasserted the averments made in the statement of claim.

6. Bases on these facts, this Tribunal vide order dated 09.10.2015 framed the following issues:

(i) Whether the management is an industry within the meaning of clause (j) Section 2 of the Industrial Disputes Act, 1947?

(ii) As in terms of reference.

7. However, during the pendency of proceedings, Shri Rupesh Kumar expired on 09.11.2016. Thereafter, an application was filed by Smt. Anita for substituting her name, being one of the legal heirs of her deceased husband, Shri Rupesh Kumar. This application was allowed vide order dated 22.02.2017.

8. Shri Abhinav Kumar, A/R for the workman stated that he does not want to pursue the present claim in as much as Smt. Anita, widow of deceased Rupesh Kumar is no more interested in pursuing the case on merits no other legal heir interested and seeking appointment on compassionate grounds.

9. Since the claimant has expired during the pendency of the proceedings of this case and no other legal heir is interested in pursuing the present reference, as such, no claim/no dispute award is hereby passed and it is held that Shri Rupesh Kumar son of Om Parkash is not entitled for appointment on compassionate grounds and his claim has been rightly rejected by the management. An award is, accordingly, passed. Let a copy of this award be sent for publication as required under section 17 of the Act.

Dated : November 30, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2909.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, क्षेत्रीय निदेशक, रत्न एवं गहने निर्यात संवर्धन परिषद्, जयपुर और उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 52/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.12.2017 को प्राप्त हुआ था।

[सं. एल-42011/28/2009-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2909.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 52/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the Regional Director, Gem & Jewellary Export Promotion Council, Jaipur and their workmen, which was received by the Central Government on 01.12.2017.

[No. L-42011/28/2009-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. No. 52/2015

Reference No. L- 42011/28/2009-IR (DU) Dated: 13.5.2015

Shri Vinod Kumar Agarwal
R/o 2-Kha-1,
Kamla Nehru Nagar, Ajmer Road,
Bhankrotha, Jaipur- 302011.

V/s.

The Regional Director
Gem & Jewellary Export Promotion Council
Rajasthan Chamber Bhawan, 3rd Floor,
M.I. Road, Jaipur -302001.

Present :

For the Applicant : Sh. Suresh Kashyap, Advocate

For the non-applicant : Sh. D.N.Sharma, Advocate

AWARD

Dated : 19.9.2017

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

> **"Whether the action of the management in denying promotion and pay scale to claimant, Shri Vinod Kumar is proper and justified? If not to what relief the concerned workman is entitled?"**

2. According to statement of claim briefly fact of the case is that applicant Sh. Vinod Kumar Agrawal was appointed on 20.2.2001 on the post of Accountant in the Regional Office, Jaipur. He is M.Com having experience in accountancy. He independently performs the work of Accountant manually hence, he is a 'workman' under section 2(s) of I.D.Act, 1947.

3. Sh. Vinay Kumar Mathur & Ajay Purohit recruited after the recruitment of applicant & junior to him were given 40% & 30% wage increment respectively w.e.f. 1.7.2007. Sh. Abdul Salim & Nagesh Tripathi working at Calcutta & New Delhi respectively since 1.4.2004 on regular appointment were given benefit of increase in wages to the extent of 250% to 450% but applicant Sh. Vinod Kumar Agrawal was discriminated by the department. He was allowed only 8% increase in the wage from 1.7.2007 whereas Vinay Mathur & Ajay Purohit were given wage increase to the extent of 250% to 450%.

4. Further it has been alleged in para 3 of statement of claim that Sh. Vinod Kumar Agrawal has not been given promotion or increment or enhancement of wages during past service period whereas similarly situated employees or junior were given benefit of increase in wages as mentioned above. Sh. Vinay Mathur was appointed in 2006 on monthly salary of Rs.6000/- & within one year his salary was increased to Rs. 11000/- per month whereas Sh. Vinod Kumar Agrawal was appointed in Feb, 2001 on monthly wage of Rs.5500/- but his salary was not increased like Vinay Mathru & he was put to economic loss by the department. Applicant is entitled to be given benefit at par with other employees like Vinay Mathur. The qualification & experience of Sh. Vinay Mathur is not higher than that of Sh. Vinod Kumar Agrawal.

5. The deduction of provident fund for the applicant Sh. Vinod Kumar Agrawal started from July, 2004 after three years of his appointment in Feb, 2001 while P.F. was deducted for other employees from the date of their appointment. Sh. Vinod Kumar Agrawal raised this issue through his representation dated 2.7.2007 & 27.12.2007 but no reply was made & his grievance remained unsettled. Legal notice sent by the applicant through his advocate was also not replied. The action of the respondent is unfair labour practice as per schedule V of Section 2(ra) of I.D.Act, 1947. The action of respondent in not giving promotion or benefit of increase in wages to the applicant like other employees may be declared null & void & concerned workman is entitled to be given same benefit as given to employees junior to him.

6. In reply to statement of claim preliminary objection & para wise reply to statement of claim has been submitted by non-applicant. In preliminary objection no.1 jurisdiction of the tribunal has been challenged with contention that respondent (Export Promotion Council) is not controlled by or under the authority of Central Government as per section 2(a) of I.D.Act, 1947 & this fact has been admitted by the applicant at the time of filing complaint against his dismissal before the Conciliation Officer, Labour Department, Government of Rajasthan. The respondent has further alleged that before the Conciliation Officer, Labour Department, Government of Rajasthan, objection was raised by non-applicant that State Government has no jurisdiction to refer the dispute between Sh. Vinod Agrawal & James & Jewellery Export Promotion Council & only Central Government is competent to refer the dispute against the applicant which was objected by applicant & a copy of the judgement of Rajasthan High Court in writ petition no. 3728/91 (Raj. Rajeshwar Dadhich V/s The Gem & Jewellery Export Promotion Council and another) was submitted wherein it has been held that Central Government had no jurisdiction to refer the dispute for adjudication hence, it has been prayed that application may be rejected on this ground only. Second objection is to the effect that Regional Director of Jaipur region is not the appointing authority of the council hence, application may be rejected on this ground also & in third objection it has been alleged that applicant was working as Manager of the Account as Head of the Department of the account. He was supervising the work of his juniors & working in supervisory capacity at the management level of the organisation hence, the applicant is not a 'workman' within the meaning of section 2(s) of I.D.Act, 1947 hence, claim of the applicant is liable to be rejected on this ground also.

7. In parawise reply to statement of claim allegation in para 1 to 4 & 6 to 9 have been denied. In reply to para 5 it has been alleged that a failure report dated 3.3.2009 was submitted by the Regional Labour Commissioner (Central), Jaipur but Ministry of Labour, Government of India vide letter dated 3.7.2009 did not consider the dispute for adjudication & hence, no reference was made. The Hon'ble Ministry of Labour was of the view that grant of promotion & higher pay other than prescribed under the Minimum Wages Act, 1948 is the prerogative of the management & hence, the matter raised by claimant cannot be construed as an industrial dispute. It has been submitted that considering the view of the Ministry of Labour Industrial Tribunal may dismiss the claim of the applicant. It has been further held that writ petition no. 3728/91 as mentioned above was decided on 9.3.2015 by Hon'ble Rajasthan High Court wherein point of jurisdiction was not before the Hon'ble High Court. Against para 10 of statement of claim it has been contended that grant of promotion & higher pay other than prescribed under Minimum Wages Act, 1948 is the prerogative of the management & hence, the matter may not be construed as an industrial dispute.

8. In additional reply to statement of claim it has been submitted that claim is liable to be rejected on the ground that there is neither a trade union nor the name of the trade union has been mentioned in the statement of claim as claimed by applicant. Against para 2 it has been alleged that applicant was Manager, Account at Regional Office at the Council at Jaipur & was the Incharge of his department supervising the work of juniors, therefore, he is not a 'workman'.

9. Against para 3 it has been alleged that claim of the applicant is baseless & false hence, denied. It has been admitted that Sh. Vinay Mathur & Sh. Ajay Purohit were recruited after the recruitment of applicant. It has also been denied that Sh. Vinay Mathur & Sh. Ajay Purohit were given wage increment 40% & 30% respectively & Sh. Abdul Salim & Sh. Nagesh Tripathi were given wage increment to the extent of 240% & 250%. Further it has been alleged that applicant was not discriminated & he was given an average increment between 12% to 15% every year & re-designated from Accountant to Manager in January, 2008. It has been submitted that persons mentioned in para 3 of statement of claim do not belong to same rolls for which the applicant was appointed & their duties & functions were entirely different therefore, there was no question of discrimination & contention of the applicant is misconceived for

this reason. It is quite clear from the average yearly increment of 12 to 15% & re-designation of Accountant as Manager that applicant was not discriminated & council had an unbiased offer to the applicant every year.

10. Against para 4 it has been alleged that salary to the applicant was paid after all applicable statutory deductions which was agreed by the applicant in contract executed between applicant & the council. The legal notice was sent by applicant during contractual period & according to terms of contract, the Audit & finance Committee had the exclusive power to decide on any dispute relating to appointment & terms of contract hence, there was no question of unfair practice.

11. Against para 5 of statement of claim it has been alleged that failure report dated 3.3.2009 was submitted by Regional Labour Commissioner however, the Hon'ble Labour Ministry vide order dated 3.7.2009 did not make the reference for adjudication finding the matter not covered within the definition of 'Industrial Dispute'. It has been further alleged that in writ petition no. 3728/91 which was decided on 9.3.2015 by the Hon'ble Rajasthan High Court the point of jurisdiction was not the matter of adjudication before the Hon'ble High Court.

12. Against para 6 it has been alleged that there is no applicant's union as trade union & no such union has authorisation to present the claim of the applicant hence, claim of the applicant may be rejected on this ground.

13. Against para 7 & 9 it has been alleged that applicant was appointed on contract in regional office, Jaipur on 20.2.2001 as Accountant who was also in-charge of account department supervising the work of his juniors. He was working on the post of Manager, Account hence, he was not a 'workman' under section 2(s) of I.D.Act, 1947.

14. Denying the averment in para 8 of statement of claim it has been alleged that averments made are irrelevant, false & without merit. Against para 10 it has been submitted that except the prescribed provision for minimum wages under Minimum Wages Act, 1948, grant of promotion & higher pay is prerogative of the management & hence, the matter may not be construed as industrial dispute. It has been finally prayed that statement of claim of the applicant may be rejected with cost.

15. On 22.2.16 reply to statement of claim was presented by non-applicant. None was present on behalf of applicant. 18.4.16 was next date fixed for filing rejoinder & document by applicant. On 18.4.16 none appeared on behalf of applicant. Learned representative of non-applicant appeared. Presiding Officer was on leave. Next date 4.7.16 was fixed for filing rejoinder & document by applicant. After order learned representative of applicant appeared who was made aware about the next date 4.7.16.

16. On 4.7.16 none appeared on behalf of applicant. learned representative for non-applicant appeared. Rejoinder & document was not filed by applicant. Case was adjourned by tribunal on its own motion & further providing opportunity to applicant 15.9.16 was next date fixed for filing rejoinder & document. After 4.7.16, 15.9.16, 7.11.16, 8.12.16 were next successive dates fixed for filing rejoinder & documents but none appeared on behalf of applicant on all these dates & case was adjourned by tribunal on its own motion providing opportunity to the applicant. On 8.12.16 adjournment was opposed by non-applicant due to continuous absence of applicant however, next date 22.12.16 was fixed for filing rejoinder & document by applicant providing last opportunity to him.

17. On 22.12.16 learned representatives of both the parties appeared. Copy of reply was taken by learned representative of applicant & next date 14.2.17 was fixed for filing rejoinder & document by applicant. Here, it is pertinent to mention that it has been mentioned on reply itself that copy of the reply was taken by applicant on 22.4.16 itself. On 14.2.16 & next successive dates 26.4.17, 18.7.17 & 6.9.17 neither anyone appeared on behalf of applicant nor rejoinder & document was filed however, till 18.7.17 case was adjourned by tribunal on its own motion providing opportunity to the applicant for filing rejoinder & document. On 6.9.17 none appeared from both the side. Looking into the fact that applicant does not appear to be interested in continuing the case, hence, due to his continuous absence further proceeding in the case was closed & case was reserved for award.

18. From perusal of case it is evident that no documentary evidence has been filed on record. Stage of filing evidence has not yet arrived. In absence of evidence it is not practicable for the tribunal to answer the reference under question & pass an award according to law. Thus, I am of the view that applicant has failed to prove that action of the management in denying promotion & pay-scale to claimant Sh. Vinod Kumar is improper & unjustified. Accordingly, applicant is not entitled to any relief. Statement of claim of the applicant Sh. Vinod Kumar Agrawal is dismissed.

19. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2910.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, अधीक्षक, हेड पोस्ट ऑफिस, बीकानेर और उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 74/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.12.2017 को प्राप्त हुआ था।

[सं. एल-40012/33/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2910.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 74/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in Annexure, in the industrial dispute between the employers in relation to the Superintendent, Head Post Office, Bikaner and their workmen, which was received by the Central Government on 01.12.2017.

[No. L-40012/33/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 74 / 2014

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं. L-40012/33/2014–IR (DU) दिनांक 30/09/2014

Shri Om Prakash Dudi S/o Sh. Hajarimal Dudi,
R/o Gali No. 8, Rampura Basti
Lalgarh,
Distt. Bikaner - 334001(Rajasthan)

v/s

The Superintendent,
Head Post Office,
Bikaner Division,
Dist. Bikaner – 334001 (Rajasthan)

प्रार्थी की तरफ से : श्री सी. डी. चतुर्वेदी– प्रतिनिधि

अप्रार्थी की तरफ से : ब्रहमानन्द सन्धु – एडवोकेट

: पंचाट :

दिनांक : 24. 10. 2017

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड़ (घ) के अन्तर्गत दिनांक 30/09/2014 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :–

> ''क्या प्रबन्धन डाक अधीक्षक, मुख्य डाकघर, बीकानेर डिवीजन, बीकानेर का कर्मकार श्री ओमप्रकाश डूडी पुत्र श्री हजारीमल डूडी को मौखिक आदेश दिनांक 10.12.2013 के द्वारा नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष पाने का अधिकारी है?''

2. याचिका में दिये गये तथ्य के अनुसार संक्षिप्ततः याची का कथन है कि अप्रार्थीगण द्वारा प्रार्थी श्रमिक को दो दिन दिनांक 21 व 22 जुलाई 2011 को प्रशिक्षण दिया गया तथा दिनांक 23 जुलाई 2013 को डाटा एन्ट्री का कार्य करने हेतु डाटा ऑपरेटर के पद पर नियुक्ति दी गई।

3. अप्रार्थीगण के अधीन प्रार्थी श्रमिक की हमेशा उपस्थिति रजिस्टर में दर्ज की जाती थी। प्रार्थी के कार्य का इन्द्राज डेली रजिस्टर में होता था जो अप्रार्थीगण के सुपरवाईजर द्वारा सत्यापित किया जाता था। प्रार्थी का कार्य व व्यवहार सदैव सन्तोषप्रद रहा है।

4. अप्रार्थीगण द्वारा प्रार्थी को वेतन का भुगतान ए. सी. जी. 17 से होता था। विपक्षीगण प्रार्थी से सदैव कम्प्यूटर पर कार्य लेते थे। प्रार्थी का कार्य स्थाई प्रकृति का था जिसकी आवश्यकता अप्रार्थीगण को सदैव रहती है।

5. प्रार्थी द्वारा डाटा एन्ट्री का कार्य करने के बाद शेष बचे हुए समय में नरेगा माइनस बैलेन्स को सुधारने का कार्य अक्टूबर 2012 से अप्रार्थीगण लेने लगे जिसके लिए रुपये 150/– प्रतिदिन की दर से भुगतान तय किया गया। प्रार्थी को सेवा में नियमित करने का आश्वासन देकर विपक्षीगण कार्य लेते रहे।

6. अप्रार्थीगण द्वारा श्रमिक को डाटा ऑपरेटर के पद तथा नरेगा माइनस बैलेन्स को सुधारने के कार्य के लिए अलग–अलग भुगतान किया जाता था। अप्रार्थीगण प्रार्थी को ईडी/बीपीएम के पद पर नियुक्ति का आश्वासन देते रहे और प्रार्थी से कार्य लेते रहे।

7. आगे प्रार्थी का कथन है कि विपक्षीगण प्रार्थी से जिस पद का कार्य ले रहे थे उस पद का मार्च 2013 से दैनिक वेतन रुपये 217/– करने का आदेश आया। प्रार्थी ने भी पोस्टमास्टर से वेतन बढ़ाने हेतु निवेदन किया तो पोस्ट मास्टर श्री सीताराम खत्री ने अधीक्षक श्री के.एल. सैनी से प्रार्थी का वेतन बढ़ाने की मांग की परन्तु प्रार्थी का वेतन नहीं बढ़ाया गया। इस प्रकार अप्रार्थी महोदय द्वारा प्रार्थी को सरकार द्वारा निर्धारित वेतन से कम वेतन दिया गया। विपक्षीगण प्रार्थी से डाटा ऑपरेटर एवँ डाक सहायक के पद का कार्य लेते रहे परन्तु चतुर्थ श्रेणी कर्मचारी के पद का वेतन देते रहे जो अवैध व अनुचित है।

8. आगे प्रार्थी का कथन है कि उसने अप्रार्थीगण के अधीन प्रथम नियुक्ति की तिथि दिनांक 23.7.2011 से 9.12.2013 तक लगातार कार्य किया है। दिनांक 10.12.2013 को अप्रार्थीगण के ए.पी.एम.आर.पी. मीणा व पी. आर. राईका ने अकारण मौखिक आदेश द्वारा प्रार्थी को सेवामुक्त कर दिया तथा प्रार्थी द्वारा पूछे जाने पर सेवामुक्ति का कोई कारण नहीं बताया। इस प्रकार प्रार्थी की सेवामुक्ति अवैध व अनुचित है एवं प्रार्थी सवेतन सेवा की निरन्तरता के साथ सेवा में पुर्नस्थापित होने का हकदार है।

9. प्रार्थी की सेवामुक्ति के समय प्रार्थी से कनिष्ठ कर्मकार श्री मोहित महात्मा, महेश सारण आदि को कार्यरत रखा गया था तथा आज भी कुछ व्यक्ति कार्यरत है। इस आधार पर प्रार्थी की सेवामुक्ति अवैध व अनुचित है।

10. प्रार्थी की सेवामुक्ति के पूर्व अप्रार्थीगण ने एक माह की नोटिस अथवा नोटिस के बदले वेतन नहीं दिया और न ही प्रार्थी जैसे कर्मकारों की कोई वरिष्ठता सूची जारी की और न ही लगभग ढाई वर्ष के कार्य के लिए मुआवजे का भुगतान किया। इस प्रकार अप्रार्थी ने प्रार्थी की सेवा समाप्ति के पूर्व औद्योगिक विवाद अधिनियम के आज्ञापक प्रावधान धारा 25 एफ, 25 जी, 25 एच एवं नियम 77 व 78 की पालना नहीं की। अतः प्रार्थी की सेवामुक्ति अवैध व अनुचित है एवं सेवामुक्ति आदेश निरस्त किये जाने योग्य है।

11. प्रार्थी ने अप्रार्थीगण के अधीन सेवामुक्ति के पूर्व विगत एक वर्ष में लगातार 240 दिन से अधिक कार्य किया है इसलिये प्रार्थी औद्योगिक कर्मकार है तथा अप्रार्थी संस्थान एक औद्योगिक संस्थान है तथा प्रार्थी व अप्रार्थी का सम्बन्ध मजदूर–मालिक का रहा है। अन्त में प्रार्थी ने प्रार्थना की है कि मौखिक सेवामुक्ति आदेश दिनांक 10.12.2013 से उसे विपक्षी की सेवा में सेवा की निरन्तरता एवं समस्त वैतनिक लाभों सहित सेवा में पुर्नस्थापित किया जाय।

12. डाक विभाग को पत्रावली उपस्थिति तथा वादोत्तर प्रस्तुत करने के कई अवसर दिये गये परन्तु प्रार्थी की याचिका के विरूद्ध कोई जवाब नहीं प्रस्तुत किया गया। दिनांक 6.4.17 को विपक्ष के विरूद्ध एकपक्षीय कार्यवाही का आदेश पारित किया गया।

13. याची ने एकपक्षीय साक्ष्य के रूप में दिनांक 27.4.17 को अपनी शपथ पत्र साक्ष्य में प्रस्तुत की एवं कोई अन्य साक्ष्य न प्रस्तुत करने का अभिकथन किया, अतः याची का साक्ष्य समाप्त किया गया। याची पक्ष की तरफ से पत्रावली पर कोई अभिलेखीय साक्ष्य नहीं प्रस्तुत किया गया है।

14. मैंने याची के विद्वान प्रतिनिधि की एकपक्षीय बहस सुनी तथा पत्रावली का सम्यक् अवलोकन किया।

15. याची के विद्वान प्रतिनिधि ने यह बहस की है कि याची ने अपनी शपथ पत्र के माध्यम से याचिका के कथन का समर्थन किया है जिसके विरूद्ध विपक्ष का कोई खण्डन नहीं है अतः याची की याचिका स्वीकार होने योग्य है तथा याची याचित अनुतोष पाने का हकदार है। उल्लेखनीय है कि यह तथ्य निर्विवाद है कि याची ने अपने कथन के समर्थन में कोई अभिलेखीय साक्ष्य नहीं प्रस्तुत किया है। याचिका के समर्थन में याची की स्वंय की शपथ पत्र के अतिरिक्त अपने कथन के समर्थन में कोई अन्य साक्ष्य जैसे सहकर्मी की शपथ पत्र, वेतन प्रमाण पत्र, अथवा नियुक्ति पत्र आदि नहीं प्रस्तुत है।

16. उल्लेखनीय है कि याची पक्ष याचित अनुतोष पाने का हकदार तब होता है जब वह याचिका का कथन सिद्ध करने में सफल हो। पंचाट चाहे एकपक्षीय हो अथवा दोनों पक्षों की सुनवाई के बाद पारित हो, प्रत्येक दशा में याचिका के कथन को सिद्ध करने का भार याची पर ही होता है। याचिका के कथन के समर्थन में कोई अभिलेखीय साक्ष्य नहीं प्रस्तुत है यह तथ्य निर्विवाद है। याची ने याचिका में यह कहा है कि 23 जुलाई को डाटा ऑपरेटर के पद पर उसे नियुक्ति दी गयी परन्तु नियुक्ति पत्र की कोई प्रति पत्रावली पर नहीं प्रस्तुत है, इस प्रकार प्रलेखीय साक्ष्य के आधार पर डाटा ऑपरेटर के पद पर नियुक्ति के कथन का समर्थन करने के लिए कोई अभिलेखीय साक्ष्य नहीं है जिससे याची के कथन की पुष्टि हो सके। प्रार्थी द्वारा मौखिक आदेश से सेवामुक्त किये जाने का कथन किया गया है परन्तु विपक्ष द्वारा सेवामुक्त करने के कथन का भी कोई समर्थन किसी अन्य साक्ष्य से नहीं होता है।

17. सेवामुक्ति की तिथि दिनांक 10.12.13 के ठीक पूर्व एक कलेण्डर वर्ष में 240 दिन कार्य करने के सम्बन्ध में भी प्रार्थी ने हाजिरी अथवा वेतन भुगतान से सम्बन्धित कोई अभिलेख नहीं प्रस्तुत किया है। पारिश्रमिक के भुगतान से सम्बन्धित भुगतान वाउचर की कोई प्रतिलिपि भी याची ने नहीं प्रस्तुत की है। विपक्ष की पत्रावली पर अनुपस्थिति की स्थिति में याची पक्ष की जिम्मेदारी इस बिन्दु पर ज्यादे बढ़ जाती है कि वह अकाट्य एवं विश्वसनीय प्रलेखीय एवं मौखिक साक्ष्य से अपनी याचिका के कथन को सिद्ध करें जो नहीं किया गया है। याची ने केवल शपथ—पत्र प्रस्तुत किया है जो याचिका के कथन की पुनरावृत्ति मात्र है। सेवा समाप्ति के तिथि के ठीक पूर्व 240 दिन लगातार कार्य करने के तथ्य को साबित करने की याची की जिम्मेदारी, साक्ष्य की प्रकृति तथा गुणवत्ता के सम्बन्ध में माननीय सर्वोच्च न्यायालय ने 2010 सर्वोच्च न्यायालय, 1236, डायरेक्टर, फिशरीज टर्मिनल डिवीजन.....अपीलार्थी बनाम भिकूभाई मेघाजीभाई चावडा.....प्रत्यर्थी, में निर्णय के प्रस्तर 14 में अवधारित किया है, ".....The burden of proof is on the respondent to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. The law on this issue appears to be now well settled. This court in the case of R.M. Yellatty v. Assistant Executive Engineer (2006) 1 SCC 106 : (2005 AIR SCW 6103), has observed:

However, Applying general principles and on reading the aforesaid judgments, we find that this Court, has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping up in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. ....."

माननीय सर्वोच्च न्यायालय द्वारा उक्त दृष्टान्त में दी गयी विधि व्यवस्था से यह स्पष्ट है कि याची को अकाट्य अभिलेखीय एवं मौखिक साक्ष्य से अपने कथन को साबित करना है जो प्रार्थी द्वारा नहीं किया गया है।

18. धारा 25 एफ का उल्लंघन सिद्ध करने का भार भी याची पक्ष पर ही है तथा साक्ष्य का क्या स्तर होना चाहिए एवं मात्र शपथ—पत्र से यह सिद्ध नहीं माना जा सकता है इस सम्बन्ध में Range forest v/s. S.T. Hadimani (2002) 3 SCC पृष्ठ 25 में माननीय सर्वोच्च न्यायालय द्वारा दी गयी व्यवस्था उल्लेखनीय है जो निम्नवत् है :— para 16..... "In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or

order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

19. प्रार्थी ने सिवाय शपथ–पत्र के अपने कथन के समर्थन में कोई प्रलेखीय या संपोषक साक्ष्य नहीं प्रस्तुत किया है। अतः मैं इस निष्कर्ष पर हूँ कि प्रार्थी धारा 25 एफ औद्योगिक विवाद अधिनियम के उल्लंघन से सम्बन्धित तथ्यों को सिद्ध नहीं कर सका है जिसके परिणामस्वरूप धारा 25 एफ का लाभ पाने का हकदार नहीं है।

20. जहां तक धारा 25 जी एवं 25 एच के उल्लंघन का प्रश्न है प्रार्थी ने याचिका में कोई उल्लेख नहीं किया है कि उसके सेवा से हटाये जाने के बाद किसे नियुक्ति दी गयी है अतः धारा 25 एच के प्राविधान लागू नहीं होते है। धारा 25 जी के उल्लंघन के सम्बन्ध में याची ने कहा है कि उससे कनिष्क व्यक्ति श्री मोहित महात्मा तथा महेश सारण आदि को कार्यरत रखा गया परन्तु याची ने कोई उल्लेख नहीं किया है कि वे किस पद पर नियुक्त थे तथा क्या वे याची के साथ नियुक्त हुए तथा याची के सहकर्मी थे। इन तथ्यों के अभाव में मैं इस निष्कर्ष पर हूं कि याची धारा 25 जी के उल्लंघन का मामला सिद्ध करने में असफल है। प्रार्थी ने वरिष्ठता सूची न बनाये जाने के सम्बन्ध में भी याचिका में उल्लेख किया है परन्तु उल्लेखनीय है कि दैनिक वेतन भोगी कर्मचारी नियोक्ता से वरिष्ठता सूची बनाने की अपेक्षा नहीं कर सकता है।

21. याची की याचिका के कथन तथा उसके समर्थन में याची द्वारा प्रस्तुत साक्ष्य की उक्त व्याख्या एवं विश्लेषण के आधार पर मैं इस निष्कर्ष पर हूँ कि याची यह सिद्ध करने में असफल है कि प्रबन्धन डाक अधीक्षक, मुख्य डाकघर, बीकानेर डिवीजन, बीकानेर द्वारा कर्मकार श्री ओमप्रकाश डूडी पुत्र श्री हजारीमल डूडी, डाटा ऑपरेटर को मौखिक आदेश दिनांक 10.12.13 के द्वारा नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत नहीं है। याची तद्नुसार याचित अनुतोष पाने का अधिकारी नहीं है। याची श्री ओमप्रकाश डूडी की याचिका खारिज की जाती है। पंचाट तद्नुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2911.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, अधीक्षक, हेड पोस्ट ऑफिस, बीकानेर और उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 75/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.12.2017 को प्राप्त हुआ था।

[सं. एल-40012/34/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2911.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 75/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in Annexure, in the industrial dispute between the employers in relation to the Superintendent, Head Post Office, Bikaner and their workmen, which was received by the Central Government on 01.12.2017.

[No. L-40012/34/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 75 / 2014

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं. L-40012/34/2014–IR (DU) दिनांक 30/09/2014

Shri Kishan Kumar Srimali S/o Sh. Daulat Ram,
R/o Infront of Nathhusar Gate,
Chunne Bhatte ke samne,
Distt. Bikaner - 334001(Rajasthan)

v/s

The Superintendent,
Head Post Office,
Bikaner Division,
Dist. Bikaner – 334001 (Rajasthan)

प्रार्थी की तरफ से : श्री सी. डी. चतुर्वेदी– प्रतिनिधि

अप्रार्थी की तरफ से : ब्रहमानन्द सन्धु – एडवोकेट

: पंचाट :

दिनांक : 23. 10. 2017

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड़ (घ) के अन्तर्गत दिनांक 30/09/2014 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :–

> ''क्या प्रबन्धन डाक अधीक्षक, मुख्य डाकघर, बीकानेर डिवीजन, बीकानेर का दैनिक कर्मकार श्री किशन कुमार श्रीमाली पुत्र श्री दैलतराम, डाक सहायक को मौखिक आदेश दिनांक 26.03.2012 दोपहर बाद से नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष पाने का अधिकारी है?''

2. प्रार्थी की प्रथम नियुकित दिनांक 17.03.2010 को अप्रार्थीगण के शिवबाडी पोस्ट ऑफिस में ब्रान्च पोस्ट मास्टर के पद पर हुई थी जिसके लिए विभागीय आदेश कमांक एपी 347 दिनांक 17.03.2010 जारी किया गया लेकिन प्रार्थी को उक्त आदेश की प्रति नहीं दी गई।

3. प्रार्थी का कार्य नकद लेन देन करना, पेंशन भुगतान करना, रजिस्ट्री करना आदि था जो प्रार्थी बखूबी सही ढंग से करता था। प्रार्थी का कार्य व व्यवहार सदैव सन्तोषप्रद रहा है। प्रार्थी को 120/– रूपये प्रतिदिन की दर से वेतन का भुगतान मासिक एरोल से होता था।

4. अप्रार्थीगण ने प्रार्थी को दिनांक 8.6.2010 को बिना किसी कारण के अवैध रूप से सेवामुक्त कर दिया एवं प्रार्थी द्वारा पूछे जाने पर कोई कारण नहीं बताया गया। प्रार्थी सेवामुक्ति के बाद बार बार अप्रार्थीगण से मिलता रहा तथा सेवा में पुनः लगाने का निवेदन करता रहा तो अप्रार्थीगण ने पुनः प्रार्थी को दिनांक 18.10. 2010 को बचत बैंक नियंत्रण संगठन ब्रांच, हैड पोस्ट ऑफिस, बीकानेर में डाक सहायक के पद पर नियुक्ति दी।

5. अप्रार्थीगण, प्रार्थी से प्रतिदिन आठ घंटे से ज्यादा कार्य लेते थे। प्रार्थी की उपस्थिति हाजरी रजिस्टर में दर्ज की जाती थी। प्रार्थी का कार्य बाऊचर से लिस्ट ऑफ ट्रांजेक्शन मिलान करना, कम्प्यूटर में वेरीफिकेशन व प्रविष्टि करना आदि था जो एक स्थाई प्रकृति का कार्य है। प्रार्थी को वेतन रूपये 150/– प्रतिदिन की दर से पन्द्रह दिनों से ए सी जी 17 से किया जाता था।

6. अप्रार्थी ने प्रार्थी को बिना किसी कारण के दिनांक 26.3.2012 को दोपहर बाद मौखिक आदेश द्वारा सेवामुक्त कर दिया। प्रार्थी को सेवामुक्ति का कोई कारण नहीं बताया गया। प्रार्थी की सेवामुक्ति के समय अप्रार्थीगण के अधीन प्रार्थी के पद का कार्य विद्यमान था जो आज भी है।

7. प्रार्थी ने अप्रार्थीगण के बचत बैंक नियंत्रण संगठन ब्रान्च में दिनांक 18.10.2010 से 26.3.2012 तक लगातार कार्य किया है तथा दिनांक 26.3.12 को दोपहर बाद अप्रार्थीगण ने मौखिक आदेश से प्रार्थी को सेवामुक्त कर दिया तथा प्रार्थी द्वारा पूछे जाने पर कोई कारण नहीं बताया। इस प्रकार प्रार्थी की सेवामुक्ति अवैध व अनुचित है। प्रार्थी अप्रार्थीगण के नियोजन में सवेतन सेवा की निरन्तरता व समस्त देय लाभों सहित बहाल होने का अधिकारी है।

8. प्रार्थी की सेवामुक्ति के समय अप्रार्थीगण के अधीन प्रार्थी से कनिष्ठ ओम प्रकाश डूडी, दीपक भादाणी, गौरीशंकर, लतीफ, जावेद, मुकेश उपाध्याय, नारायण चुरा आदि अनेक व्यक्ति कार्यरत थे तथा प्रार्थी की सेवामुक्ति के बाद नये व्यक्ति रमेश कुमार, गोपाल पम्नानी, मोहित महात्मा, मनीष जांगिड आदि को नियुक्ति दी गयी लेकिन प्रार्थी को आमंत्रित नहीं किया गया। इस प्रकार प्रार्थी की सेवामुक्ति अवैध व अनुचित है। प्रार्थी की सेवामुक्ति के बाद लगातार अप्रार्थीगण से पुनः काम पर रखने का निवेदन प्रार्थी करता रहा परन्तु अप्रार्थीगण मात्र आश्वासन देते रहे।

9. प्रार्थी की सेवामुक्ति के पूर्व अप्रार्थीगण ने एक माह का नोटिस अथवा वेतन नहीं दिया और न ही प्रार्थी जैसे कर्मकारों की वरिष्ठता सूची जारी की और न ही लगभग दो वर्ष के कार्य के लिए मुआवजा का भुगतान किया। इस प्रकार अप्रार्थी महोदय ने प्रार्थी की सेवा समाप्ति के पूर्व औद्योगिक विवाद अधिनियम के आज्ञापक प्रावधान धारा 25 एफ, 25 जी, 25 एच एवम नियम 77 व 78 की पालना नहीं की थी, इसलिये प्रार्थी की सेवामुक्ति अवैध व अनुचित है जो निरस्त किये जाने योग्य है।

10. प्रार्थी ने अप्रार्थीगण के अधीन सेवामुक्ति के पूर्व विगत एक वर्ष में लगातार 240 दिन से अधिक कार्य किया है। प्रार्थी औद्योगिक कर्मकार है तथा अप्रार्थी संस्थान एक औद्योगिक संस्थान है तथा प्रार्थी व अप्रार्थी का सम्बन्ध मजदूर मालिक का रहा है।

11. विपक्ष का पत्रावली पर प्रतिनिधित्व रहा है। अवसर दिये जाने के बावजूद विपक्ष की तरफ से प्रार्थी के क्लेम के विरूद्ध कोई जवाब नहीं प्रस्तुत किया गया। वादोत्तर न प्रस्तुत करने के कारण दिनांक 6.4.17 को विपक्ष के विरूद्ध एकपक्षीय कार्यवाही का आदेश पारित किया गया।

12. याची पक्ष की तरफ से याची का शपथ–पत्र एकपक्षीय साक्ष्य के रूप में प्रस्तुत किया गया और अपना साक्ष्य समाप्त किया गया। याची पक्ष की तरफ से पत्रावली पर कोई अभिलेखीय साक्ष्य नहीं प्रस्तुत है।

13. मैंने याची के विद्वान प्रतिनिधि की एकपक्षीय बहस सुनी तथा पत्रावली का सम्यक अवलोकन किया।

14. याची के विद्वान प्रतिनिधि ने बहस की है कि उनकी एकमात्र बहस यह है कि याचिका के कथन के समर्थन में याची की शपथ–पत्र प्रस्तुत की गयी है जिसका विपक्ष की तरफ से कोई खण्डन नहीं है अतः याची की याचिका स्वीकार होने योग्य है तथा याची याचित अनुतोष पाने का हकदार है।

15. उल्लेखनीय है कि याची पक्ष याचित अनुतोष पाने का हकदार तब होता है जब वह याचिका का कथन सिद्ध करने में सफल हो। पंचाट चाहे एकपक्षीय हो अथवा दोनों पक्षों की सुनवाई के बाद पारित हो, प्रत्येक दशा में याचिका के कथन को सिद्व करने का भार याची पर ही होता है। याचिका के कथन के समर्थन में कोई अभिलेखीय साक्ष्य नहीं प्रस्तुत है यह तथ्य निर्विवाद है। याची ने याचिका में यह कहा है कि नियुक्ति आदेश दिनांक 17.03.2010 का है और उसी तिथि को ब्रान्च पोस्ट मास्टर के पद पर अपनी नियुक्ति बतायी है परन्तु यह भी कहा है कि उसे नियुक्ति आदेश नहीं दिया गया, इस प्रकार प्रलेखीय साक्ष्य के आधार पर ब्रान्च पोस्ट मास्टर के पद पर नियुक्ति के कथन को समर्थित करने के लिए कोई अभिलेखीय साक्ष्य नहीं है जिससे याची के कथन की पुष्टि हो सके।

16. दिनांक 8.6.2010 को प्रार्थी को ब्रान्च पोस्ट मास्टर के पद से सेवामुक्त करने एवं दिनांक 18.10.2010 को डाक सहायक के पद पर पुनः सेवा में पदस्थापित करने के सम्बन्ध में भी प्रार्थी ने कोई अभिलेखीय साक्ष्य नहीं प्रस्तुत किया है न इस बात का कोई उल्लेख किया है कि दिनांक 8.6.2010 को सेवामुक्ति आदेश लिखित रूप में दिया गया था या मौखिक आदेश था।

17. सेवामुक्ति की तिथि दिनांक 26.3.12 के ठीक पूर्व एक कलेण्डर वर्ष में 240 दिन कार्य करने के सम्बन्ध में भी प्रार्थी ने हाजिरी अथवा वेतन भुगतान से सम्बन्धित कोई अभिलेख नहीं प्रस्तुत किया है। दोनों ही पदों पर प्रार्थी ने दैनिक वेतन भोगी के रूप में पारिश्रमिक पाने का उल्लेख किया है परन्तु पारिश्रमिक के भुगतान से सम्बन्धित भुगतान वाउचर की कोई प्रतिलिपि नहीं प्रस्तुत की है। विपक्ष की पत्रावली पर अनुपस्थिति की स्थिति में याची पक्ष की जिम्मेदारी इस बिन्दु पर ज्यादे बढ़ जाती है कि वह अकाट्य एवं विश्वसनीय प्रलेखीय एवं मौखिक साक्ष्य से अपनी याचिका के कथन को सिद्ध करें जो नहीं किया गया है। याची ने केवल शपथ–पत्र प्रस्तुत किया है जो याचिका के कथन की पुनरावृत्ति मात्र है। सेवा समाप्ति के तिथि के ठीक पूर्व 240 दिन लगातार कार्य करने के तथ्य को साबित करने की याची की जिम्मेदारी, साक्ष्य की प्रकृति तथा गुणवत्ता के सम्बन्ध में माननीय सर्वोच्च न्यायालय ने 2010 सर्वोच्च न्यायालय, 1236, डायरेक्टर, फिशरीज टर्मिनल डिवीजन.....अपीलार्थी बनाम भिकूभाई मेघाजीभाई चावडा.....प्रत्यर्थी, में निर्णय के प्रस्तर 14 में

अवधारित किया है, ".....The burden of proof is on the respondent to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. The law on this issue appears to be now well settled. This court in the case of R.M. Yellatty v. Assistant Executive Engineer (2006) 1 SCC 106 : (2005 AIR SCW 6103), has observed:

However, Applying general principles and on reading the aforesaid judgments, we find that this Court, has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping up in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. ....."

माननीय सर्वोच्च न्यायालय द्वारा उक्त दृष्टान्त में दी गयी विधि व्यवस्था से यह स्पष्ट है कि याची को अकाट्य अभिलेखीय एवं मौखिक साक्ष्य से अपने कथन को साबित करना है जो प्रार्थी द्वारा नहीं किया गया है।

18. धारा 25 एफ का उल्लंघन सिद्ध करने का भार भी याची पक्ष पर ही है तथा साक्ष्य का क्या स्तर होना चाहिए एवं मात्र शपथ—पत्र से यह सिद्ध नहीं माना जा सकता है इस सम्बन्ध में Range forest v/s. S.T. Hadimani (2002) 3 SCC पृष्ठ 25 में माननीय सर्वोच्च न्यायालय द्वारा दी गयी व्यवस्था उल्लेखनीय है जो निम्नवत् है :— para 16..... "In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

19. प्रार्थी ने सिवाय शपथ—पत्र के अपने कथन के समर्थन में कोई प्रलेखीय या संपोषक साक्ष्य नहीं प्रस्तुत किया है। अतः मैं इस निष्कर्ष पर हूँ कि प्रार्थी धारा 25 एफ औद्योगिक विवाद अधिनियम के उल्लंघन से सम्बन्धित तथ्यों को सिद्ध नहीं कर सका है जिसके परिणामस्वरूप धारा 25 एफ का लाभ पाने का हकदार नहीं है।

20. धारा 25 जी एवं धारा 25 एच के उल्लंघन के सम्बन्ध में भी याची ने कर्मचारियों के नाम का उल्लेख करते हुए यह कहा है कि याची की तुलना में उससे कनिष्क कर्मचारी श्री औम प्रकाश डूडी, दीपक भादाणी आदि कार्यरत रहे और उसे सेवामुक्त कर दिया गया एवं उसकी सेवामुक्ति के उपरान्त श्री रमेश कुमार, श्री गोपाल आदि नियुक्त किये गये परन्तु प्रार्थी को सेवा में वापस लेने का अवसर विपक्ष द्वारा नहीं दिया गया परन्तु याची द्वारा अपने कनिष्ठ कर्मियों की नियुक्ति अथवा सेवामुक्ति के बाद नये कर्मचारियों की नियुक्ति के तथ्य को सिद्ध नहीं किया गया है न उनकी नियुक्ति से सम्बन्धित कोई आदेश या नियुक्तिपत्र प्रस्तुत किया गया है।

21. याची की याचिका के कथन तथा उसके समर्थन में याची द्वारा प्रस्तुत साक्ष्य की उक्त व्याख्या एवं विश्लेषण के आधार पर मैं इस निष्कर्ष पर हूँ कि याची यह सिद्ध करने में असफल है कि प्रबन्धन डाक अधीक्षक, मुख्य डाकघर, बीकानेर डिवीजन, बीकानेर द्वारा दैनिक कर्मकार श्री किशन कुमार श्रीमाली पुत्र श्री दैलतराम, डाक सहायक को मौखिक आदेश से दिनांक 26.03.2012 के दोपहर बाद से नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत नहीं है। याची तद्नुसार याचित अनुतोष पाने का अधिकारी नहीं है। याची श्री किशन कुमार श्रीमाली की याचिका खारिज की जाती है। पंचाट तद्नुसार पारित किया जाता है।

22. पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाए।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2912.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मणिपाल विश्वविद्यालय, माधव नगर, मणिपाल उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 07/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.12.2017 को प्राप्त हुआ था।

[सं. एल-42012/107/2009-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2912.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 07/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in Annexure, in the industrial dispute between the employers in relation to the Manipal University, Madhava Nagar, Manipal and their workman, which was received by the Central Government on 13.12.2017.

[No. L-42012/107/2009-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 14th November, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C.R. No. 07/2010

I Party	**II Party**
Sh. Ravindera Nayak, S/o Shri Sundar Nayak, 'Anugraha', Moodu Sagri, Kunjibettu, Udupi, Dakshina Kannada Dist.	The Registrar, Manipal University, Madhav Nagar, Manipal – 576104. Represented by its Registrar
Advocate for I Party :	Advocate for II Party :
Mr. K.B. Arasa	Ms. Latha C.S. Holla

AWARD

1. The Central Government vide Order No.L-42012/107/2009-IR(DU) dated 28.01.2010 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

"Whether the action of the management of Welcom Group Graduate School of Hotel Administration in termination the services of their workman Shri Ravindera Nayak w.e.f 23.06.2006 is legal and justified? If not, What relief the workman is entitled to?"

2. The I Party has prayed in the claim statement as follows:-

a) That an Award may be passed holding the dismissal unlawful and unjustifiable.

b) That the II Party Employers may be directed to re-employ the I Party workman in the place in which he had been in employment before dismissal and pay the wages due to him from the date of suspension to the date of re-employment with all consequential benefits available under the rules and

c) pay the cost of conducting this case to the I Party.

3. However, a Joint memo filed by both the parties, dated 12-09-2017. It is clearly stated that both the parties have amicably settled the above dispute and made a Memorandum of Settlement under section 18(1) and section 2(p) of the Industrial Disputes Act, 1947. In view of the settlement between the parties, the I party herein does not press for any and further reliefs in the above case. Therefore, it is prayed that, the Court may be pleased to conclude the proceedings and dispose of the case as settled between the parties out of the Court. The said joint memo is filed and signed by counsel and parties of both sides and the settlement is in order. Hence, the same is recorded and the joint memo filed by the parties dated 12-09-2017 is to be treated as part and parcel of the award for better and proper understanding of the settlement arrived at, in between the parties. Consequently the present central reference is disposed, as settled in between the parties, out of, court as per the request made in the joint memo dated 12-09-2017. Hence, the award is passed accordingly, for the above mentioned reasons.

AWARD

The present central reference is disposed, as settled in between the parties, out of, court as per the request made in the joint memo dated 12-09-2017.

(Dictated, transcribed, corrected and signed by me on 14th November, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2913.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मणिपाल विश्वविद्यालय, माधव नगर, मणिपाल उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 17/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.12.2017 को प्राप्त हुआ था।

[सं. एल-42012/259/2010-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2913.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 17/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in Annexure, in the industrial dispute between the employers in relation to the Manipal University, Madhava Nagar, Manipal and their workman, which was received by the Central Government on 13.12.2017.

[No. L-42012/259/2010-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 14th November, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C.R. No. 17/2011

I Party

The General Secretary,
Manipal University Mazoor Union (R),
C/o B.M.S. Office, Felix Pai Bazaar,
Mangalore -575001

Advocate for I Party :

Mr. K.B. Arasa

II Party

The Registrar,
Manipal University,
Madhav Nagar,
Manipal – 576104.

Advocate for II Party :

Mr. K.S. Bhat

AWARD

1. The Central Government vide Order No.L-42012/259/2010-IR(DU) dated 11.05.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

"Whether the action of the Management of Manipal University, in dismissing Shri H.K. Narasimha who was engaged in House Keeping work, from services w.e.f 09.02.2009 is legal and justified? What relief the workman is entitled to?"

2. The I Party has prayed in the claim statement as follows:-

To set aside the dismissal order issued to Mr. Narasimha H K w.e.f 09.02.2009 and thereafter to reinstate him in his original post with continuity of service, full back wages and all other consequential benefits in the interest of Justice, Equity and Fair-play.

3. However, a Joint memo filed by both the parties, dated 12-09-2017. It is clearly stated that both the parties have amicably settled the above dispute and made a Memorandum of Settlement under section 18(1) and section 2(p) of the Industrial Disputes Act, 1947. In view of the settlement between the parties, the I party herein does not press for any and further reliefs in the above case. Therefore, it is prayed that, the Court may be pleased to conclude the proceedings and dispose of the case as settled between the parties out of the Court. The said joint memo is filed and signed by counsel and parties of both sides and the settlement is in order. Hence, the same is recorded and the joint memo filed by the parties dated 12-09-2017 is to be treated as part and parcel of the award for better and proper understanding of the settlement arrived at, in between the parties. Consequently the present central reference is disposed, as settled in between the parties, out of, court as per the request made in the joint memo dated 12-09-2017. Hence, the award is passed accordingly, for the above mentioned reasons.

AWARD

The present central reference is disposed, as settled in between the parties, out of, court as per the request made in the joint memo dated 12-09-2017.

(Dictated, transcribed, corrected and signed by me on 14th November, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2914.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मणिपाल विश्वविद्यालय, माधव नगर, मणिपाल उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 43/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.12.2017 को प्राप्त हुआ था।

[सं. एल-42012/22/2011-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2914.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 43/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in Annexure, in the industrial dispute between the employers in relation to the Manipal University, Madhava Nagar, Manipal and their workman, which was received by the Central Government on 13.12.2017.

[No. L-42012/22/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 14th November, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C.R. No. 43/2011

I Party	**II Party**
Sh. Y. Panduranga Shettigar, S/o Veerappa Shettigar, R/at Yekkar, Near Perumude Church, Perumde, Bajpe, Mangalore-574509	Manipal University, Madhav Nagar, Manipal – 576104.
	Represented by its Registrar
Advocate for I Party :	Advocate for II Party :
Mr. K.B. Arasa	Ms. Latha C.S. Holla

AWARD

1. The Central Government vide Order No.L-42012/22/2011-IR(DU) dated 13.10.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

"Whether Shri Y. Panduranga Shettigar, ex-employee of Manipal University, is justified in demanding payment of retrenchment compensation as provided under section 25F or 25N upon his compulsory retirement from service by the management of Manipal University, Manipal? What relief the workman is entitled to?"

2. The I Party has prayed in the claim statement as follows:-

After notice to the II Party the Tribunal may be pleased to direct the II Party to compute and pay to the I Party such terminal benefits including leave benefit and retrenchment compensation as also salary for the period the I Party has been under suspension prior to the termination of his services, as this Tribunal may deem fit and just.

3. However, a Joint memo filed by both the parties, dated 12-09-2017. It is clearly stated that both the parties have amicably settled the above dispute and made a Memorandum of Settlement under section 18(1) and section 2(p) of the Industrial Disputes Act, 1947. In view of the settlement between the parties, the I party herein does not press for any and further reliefs in the above case. Therefore, it is prayed that, the Court may be pleased to conclude the proceedings and dispose of the case as settled between the parties out of the Court. The said joint memo is filed and signed by counsel and parties of both sides and the settlement is in order. Hence, the same is recorded and the joint memo filed by the parties dated 12-09-2017 is to be treated as part and parcel of the award for better and proper understanding of the settlement arrived at, in between the parties. Consequently the present central reference is disposed, as settled in between the parties, out of, court as per the request made in the joint memo dated 12-09-2017. Hence, the award is passed accordingly, for the above mentioned reasons.

AWARD

The present central reference is disposed, as settled in between the parties, out of, court as per the request made in the joint memo dated 12-09-2017.

(Dictated, transcribed, corrected and signed by me on 14th November, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2915.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रजिस्ट्रार, बनारस हिन्दू यूनिवर्सिटी, वाराणसी एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 32/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.12.2017 को प्राप्त हुआ था।

[सं. एल-42012/77/2016-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2915.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 32/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in Annexure, in the industrial dispute between the employers in relation to the Registrar, Banaras Hindu University, Varanasi and their workman, which was received by the Central Government on 08.12.2017.

[No. L-42012/77/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT/LOK ADALAT, KANPUR

Industrial Dispute No. 32 of 2016

Between-

Md. Sayed S/o MD. Wahid,
Vill- Shujabad kasauri, Mo & Po- Parao,
Varanasi(U.P.)-221002

Vs

The Registrar,
Banaras Hindu University,
Varanasi (U.P.)-221002

AWARD

1. Central Government, MoI, vide notification no.L-42012/77/2016-IR (DU) dated 15.07.2016, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of BHU, Varanasi in terminating the service of casual worker Mohd. Sayeed on dated 01.08.2010 is legal & justified? If not what relief the concerned alleged workman Mohd. Sayeed is entitled?

3. In the instant case a reference was referred to Central Government Industrial Tribunal cum Labor Court, Kanpur, whereupon notice to the claimant was issued under registered post by CGIT Kanpur for filing his claim in the case.

4. On 07.07.2017, when the case was taken up neither the worker turned up nor filed his claim statement despite availing of sufficient opportunities. Therefore, it appears that the worker is not interested in prosecuting his claim before this tribunal. As such having no option left with the tribunal except to give an award in the case against the worker for want of pleadings and proof.

5. For the reasons given above, award is passed against the worker holding that the worker is not entitled to any relief pursuant to the present reference order for want of pleadings and proof.

6. Reference is answered accordingly against the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2916.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंधक, सीएसडी कैंटीन, 7-एयर फोर्स हॉस्पिटल, कानपुर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 40/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.12.2017 को प्राप्त हुआ था।

[सं. एल-42012/40/2013-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2916.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 40/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in Annexure, in the industrial dispute between the employers in relation to the Manager, CSD Canteen, 7-Air Force Hospital, Kanpur and their workman, which was received by the Central Government on 08.12.2017.

[No. L-42012/40/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT/LOK ADALAT, KANPUR

Industrial Dispute No. 40 of 2014

Between-

Shri Ram Pratap Singh
S/o Late Chandra Pal Singh
B-39, Chander Nagar,
Kanpur(U.P)-208004

Vs

The Manager,
CSD Canteen, 7-Air Force Hospital
Nathu Singh Road, Cantt.
Kanpur (U.P)-208004

AWARD

1. Central Government, Mol, vide notification No. L-42012/40/2013-IR (DU) dated 18-03-2014, has referred the following dispute for adjudication to this tribunal.

2. "Whether the action of the management of CSD canteen, Kanpur over the matter of termination of Shri Ram Pratap from Services is legal and justified? If not, what relief the workman is entitled to?"

3. In the instant case a reference was referred to Central Government Industrial Tribunal cum Labor Court, Kanpur, whereupon notice to the claimant was issued under registered post by CGIT Kanpur for filing his claim in the case.

4. Worker Ram Pratap Singh has filed claim statement with the facts that he was appointed in m/s CSD canteen 7-Air Force hospital on 09-03-2007 as labour and had served for more than 240 days. He could not appear on duty from 01-08-12 to 10-08-12 due to illness. After recovery he came to join his duties on 11-08-12 with medical certificate. He was not allowed to join. He sent representations but was not taken on duties without any domestic enquiry or notice his services was terminated.

5. Opposite parties filed w/s with the facts that worker Ram Pratap Singh was an employee of Unit Run Canteen (URC) and he was not employee of CSD. It is also alleged that units are run by private ventures and their employees are not common employees. It was also alleged that worker remain absent for long time and he was issued show-cause notice but he did not come for duties nor sent any leave application. The applicant was served final notice on 15-10-12 but applicant did not join and therefore the management of URC keeping long the absence of applicant without any valid reasons as per rules terminated his services w.e.f 10-12-12.

6. Worker has filed rejoinder.

7. Both the parties have filed photocopies of documents.

8. I have heard A.R. for management and none appeared on behalf of worker to submit arguments.

9. It appears from perusal of record that neither workman nor management has given any oral evidence. Both the parties have filed photocopies of documents which are not proved by oral evidence of parties. Photocopy of document cannot be read unless they are proved by cogent oral evidence. Therefore in this case as parties have failed to prove photocopy of documents nor have produced any oral evidence and initially the burden to prove lies on worker which he utterly failed. Therefore tribunal is of the view that worker has failed to prove his case for want of proof and as such. It can be held that worker has failed to prove that action of management of CSD canteen in terminating his services is not legal and justified.

10. The reference is decided accordingly against worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2917.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, एल्गिन मिल्स कंपनी लिमिटेड, कानपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 39/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.11.2017 को प्राप्त हुआ था।

[सं. एल-42012/12/2013-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2917.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 39/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Elgin Mills Co. Ltd., Kanpur & others and their workman, which was received by the Central Government on 20.11.2017.

[No. L-42012/12/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT/LOK ADALAT, KANPUR

Industrial Dispute No. 39 of 2013

Between-

Shri Ram Kripal,
S/O Late Ayodhya Prasad,
C/O Shri Asit kumar Singh, General Secretary,
Hind Mazdoor Sabha, C-338, Barra-6,
Kanpur (U.P.)-208027

Vs

1. The General Manager,
The Elgin Mills Co. Ltd.,
Mill No. 2, Cooperganj,
Kanpur (U.P.)-

2. The General Manager,
British India Corporation Ltd.,
Parwati Bagla Road, Civil Lines,
Kanpur (U.P.)-208001

AWARD

1. Central Government, Mol, vide notification No.L-42012/12/2013-IR (DU) dated 24-05-2013, has referred the following dispute for adjudication to this tribunal.

2. "Whether the action of the management of the Elgin Mills Company Ltd., Kanpur, A Unit of British India Corporation Ltd., Kanpur in terminating the services of Shri Ram Kripal, S/o Late Ayodhya Prasad workman w.e.f. 01.03.2001 by way of his premature retirement is just & legal? What relief the workman concerned is entitled to?"

3. In the instant case a reference was referred to Central Government Industrial Tribunal cum Labor Court, Kanpur, whereupon notice to the claimant was issued under registered post by CGIT Kanpur for filing his claim in the case.

4. Worker Ram Kripal has filed his claim statement stating that he was appointed as sepoy in 1978 in M/s the Elgin Mill company Ltd., Kanpur in watch & ward department and had deposited his educational and caste certificate wherein his date of birth was mentioned as 4-04-1949. During his service period he got injured on 23-03-1998 in an accident. A report was sent to state Employees Insurance Corporation on form 16 wherein his age was mentioned as 50 years and he was superannuated on 01-03-2001 illegally and it was requested that order passed by management for superannuating him on 1-03-2001 be declared illegal and he be reinstated and be paid back wages.

5. Management has filed his reply refuting the claim of worker and it is alleged that this claim is filed after 13 years of his superannuation. It is further alleged that it is pertinent to mention that Elgin Mills Company Limited, Kanpur has been winded up by the orders of Hon'ble High Court, Allahabad and ordered to appoint Official Liquidator vide order dated 25-10-2010 and entire assets and properties are in the custody and control of the Official Liquidator. Under 446 of the Company's Act when a winding up order has been made or the Official Liquidator has been appointed as Provisional Liquidator, no suit or other legal proceedings shall be commenced or if pending on the date of winding up order, shall be proceeded with against the company, except by leave of the Hon'ble High Court. In view of the above, this Hon'ble Tribunal has no jurisdiction to pass any order against the company in the above case, without leave of the Company Judge of Hon'ble High Court, Allahabad. Thereafter worker has filed rejoinder in which nothing new has been added.

6. Management during pendency of this dispute has moved application 13/1 wherein it is alleged that as the company has been winded up and liquidator has been appointed by orders of Hon'ble High Court this jurisdiction of the tribunal is ceased and this case cannot proceed after appointment of official liquidator Management has also filed 5 documents through list 12/1. Worker has filed his objection 14/1 denying the fact alleged by management in application.

7. I have heard parties' representative and perused the record.

8. Management has filed copy of order dated 25-10-10 passed Hon'ble High Court in company petition no. 24/2009 M/s Kotak Mahindra Bank Ltd. V/s M/s Elgin Company Ltd. which is paper no 12/7. A perusal of order reveals that Hon'ble High Court has passed order for winding up the Elgin Ltd. Company and appointment of official Liquidator.

9. In this connection it is also important to point out that this industrial dispute has been registered on reference issued by Central Government on 24.05.13 that is much after the order passed by Hon'ble High Court for winding up the company and appointment of official liquidator. This fact is not denied by worker therefore it appears to be admitted to the worker.

10. Section 446(1) states that when a winding up order has been made or the or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.

11. As discussed above this dispute is referred much after the order of Hon'ble High Court for winding up of company and appointment of official liquidator. Therefore this dispute/case cannot be proceeded in view of provisions mentioned above under section 446(1) of company act.

12. As such this tribunal is not competent to decide this dispute and pass any award.

13. Reference is answered accordingly.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2918.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूर संचार जिला प्रबंधक, बीएसएनएल, बहराइच और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 120/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.12.2017 को प्राप्त हुआ था।

[सं. एल-40012/83/2004-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2918.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 120/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the employers in relation to the Telecom District Manager, BSNL, Bahraich & other and their workmen, which was received by the Central Government on 01.12.2017.

[No. L-40012/83/2004-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : Rakesh Kumar, Presiding Officer

I.D. No. 120/2004

Ref.No. L-40012/83/2004-IR(DU) dated 29.10.2004

BETWEEN

Sri. Avneendra Tewari S/o Sri V.B.Tewari
R/o Mohalla Satti Kunwan,Civil Lines
Bahraich

AND

1. The Telecom District Manager
Telecom Deptt. BSNL
Bahraich

2. The Chief General Manager,Telecommunication
East, Lucknow/The Principal General Manager
Pee Kay Bhawan
Lucknow

AWARD

1 By order No. L-40012/83/2004-IR(DU) dated 29.10.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Avneendra Tewari S/o Sri V.B. Tewari and the Chief General Manager,Telecommunication/ Principal General Manager/Telecom District Manager, Lucknow/Bahraich for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF BSNL, BAHRAICH IN TERMINATING THE SERVICES OF SH. AVINDER TEWARI S/O SRI V.B.TEWARI, DAILY WAGER W.E.F. 30.09.2001 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?"

3. As per the claim statement A1-2 the workman has stated in brief while being unemployed and in search of job, the petitioner contacted opposite party no.1 and the applicant was offered the job of Generator Operator in the Telephone Exchange, Mihirpurwa, Bahraich on daily wages, since he has obtained certificate from Industrial Training

Insititute, Bahraich in Electrical Trade. It has been asserted that the petitioner joined his duties on 01.09.2000 and has worked continuously till 30.09.2001 without break with due satisfaction of his superiors, there was no complaint against him. Monthly payment details has been given in para 4 of the claim statement. It has further been alleged that the services of the petitioner were abruptly terminated on 30.09.2001 by opposite party no.1 through an oral order and without any notice, chargesheet, compensation etc, provisions of Section 25F of the I.D. Act. were violated by the management.

4. The petitioner has emphasized that opposite party no.1 informed that his services were terminated with the directions of the opposite party no.2 & 3 although opposite party no.1 sent information to opposite party no.2 vide letter dated 05.10.2001 that the application workman had worked continuously for more than 240 days in a calander year. No prior notice and compensation was paid to him, several other persons junior to him were retained by the management. Provisions of Section 25H and 25G of the I.D. Act have been allegedly violated by the management. With the aforesaid pleadings request has been made for reinstatement of the workman alongwith continuity in service and full back wages etc.

5. Several documents have been filed as per list W-5 by the workman.

6. The management has filed written statement A2-13, alongwith separate application for condonation of delay. The opposite party while denying the allegations leveled in the claim statement has submitted that opposite party no.1 had no authority or power to engage any person in any capacity nor casual/temporary or daily rated/contract or short term basis. The management has got its Service Rules and Recruitment Rules, appointments are made strictly in accordance with these Rules. It has been stressed in the written statement that the applicant was never engaged in any capacity therefore the question of his alleged termination does not arise. The so called list of documents filed alongwith claim statement have been alleged by the opposite party as false and fictitious. No provision of I.D. Act has ever been violated by the management. Request has been made to reject the claim statement and to adjudicate the matter in favour of the respondent/opposite party.

7. The workman while strongly denying the counter allegation leveled in the written statement, has filed rejoinder A1-16 reiterating the pleas taken earlier in the claim statement. The names of other persons allegedly regularized by the management have been given in the rejoinder. Another list of documents C-17 enclosed by bunch documents has been filed by the workman. The management has filed certain documents as per list C-31.

8. The workman has filed his affidavit A1-32, as evidence and has been thoroughly cross examined on behalf of the management. Further the workman has filed documents as per list C-38/2 and C-39.

9. The management has filed affidavit of Sri Ram Charan, Divisional Engineer (HQ) as A2-36. He has been cross examined on behalf of the workman. Certain documents have been annexed alonwith his affidavit.

10. As per list M-54 and M-56 management has again filed photo copies of some documents, and document as per M-55.

11. Further an affidavit was filed as W-57. He has been cross examined on behalf of the management. An order passed by the CAT in O.A. 292/04 has been filed by the workman. Sri Dukhanti Prasad has been adduced by the workman as evidence. He has been cross- examined on behalf of the management but cross examination could not be concluded.

12. During the proceedings of the case, none has appeared in the court on behalf of the management to advance the arguments although several notices through registered post were sent to the management.

13. Arguments of Learned AR of the workman have been heard at length. Record has been scanned thoroughly.

14. Learned AR for the workman has asserted that the petitioner was employed as Generator Operator in the Telephone Exchange, as he had obtained a valid certificate from ITI, Bahraich in Electrical Trade. It has been emphasized that he has been working continuously from 1.09.2000 to 30.09.2000 but suddenly his services were terminated by Opposite Party No.1 without assigning any reason and giving any notice, charge sheet, compensation etc. The management while strongly refuting the facts of the claim statement, submits that opposite party no.1 did not have any authority or power to engage any person in any capacity, neither on casual basis nor on daily rated/contract, short term basis. All appointments are made in accordance with the departmental Rules and Recruitment Rules.

15. The workman Sri Avneendra Tewari in his affidavit W-57 has specifically stated the period for which he had worked in the department, and he has also mentioned that letter for regularization of casual labours was sent by SDE to the TDM. Copy of an order dated 09.12.2009, passed by the CAT, Lucknow in OA No. 292/04 has also been filed by the workman.

16. On behalf of the management Sri Ram Charan, Divisional Engineer HQ filed an affidavit A-36. Regarding sanction of staff in various Telephone Exchange and availability of the staff in the said 13 Telephone Exchange, questions have been asked from him on behalf of the workman. The sum dis-allowed by the Accounts Section, has been put in the cross examination with Sri Ram Charan. So called irregular activities conducted by Sri Dukhanti Prasad, the then SDE have been mentioned by the management witness Sri Ram Prasad but have not been duly corroborated by any authentic evidence. Moreover the then SDE Sri D.Prasad has been adduced in evidence by the workman, as W-64. Sri D.Prasad has stated on oath that the then Divisional Engineer Sri U.N. Agarwal has asked to employ Sri Aveenendra Tewari and thereafter the workman has worked w.e.f. 01.09.2000 to 30.09.2001 and payment has been made through voucher ACG-17. The relevant documents no.54 etc. have been admitted by the witness. The duties performed by the workman have been mentioned in the statement on page no.4. Sri D.Prasad has asserted that a letter was sent to TDM by him for the confirmation of the workman. On page no.6 the witness Sri D.Prasad has replied to a question regarding regularization, and has elaborated that 16 employees were regularized. On page no.7 in the cross examination Sri D.Prasad has stated that the amount of Rs.18698/- was allowed while the remaining Rs.15302 was dis-allowed. The proceedings regarding recovery from him have been challenged before the CAT, Lucknow and the same are pending there. He has also submitted that there was no departmental enquiry, neither any charge sheet was submitted.

17. Proxmity of Sri D.Prasad with the workman or any relationship/affinity etc. has not been brought on record by the management. In such circumstances the evidence on oath by Sri D.Prasad can not be disbelieved or brushed aside. The duties performed by the workman were purely official in nature, he was not a personal servant of any SDE/DET/DTM etc. All the details regarding payment made to the workman have been mentioned in para 4 of the claim statement and further in his affidavit, which clearly reflects that he has worked for more than 240 days in a calander year.

18. It may be quite pertinent to mention here that since 18.03.2014, none has been appearing in the court on behalf of the management. Several notices have been sent to the management through registered post yet none turned up before this Court. However on 18.02.2015, AR for OP appeared in the court, and he was informed the next date of hearing for argument. Again the management refrained itself from further proceeding with the case. Again in the interest of justice, notice through registered post was issued. It has also been pointed out on behalf of the workman that several other casual labourers have been regularized by the management but his services were illegally terminated.

19. After having heard the intellect arguments advanced on behalf of the workman, on perusal of the record available before the court, it is inferred that the aforesaid termination order dated 30.09.2001 can not be treated as legal or justified. The petitioner workman Sri Aveneendra Tewari is genuinely entitled for his reinstatement and to get 50% of the back wages. He is also entitled for his regularization, taking into account the fact that similar other casual labours have earlier been regularized by the management. The management is directed to reinstate the workman and to ensure the payment of dues to him, within 10 weeks from the date of notification of the award, failing which the petitioner shall also be entitled to get interest @ 6% per annum from the management.

20. Award as above.

LUCKNOW

30.10. 2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2919.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य महाप्रबंधक, एमटीएनएल, मुंबई एवं उनके कर्मचारी और अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, मुंबई के पंचाट (संदर्भ संख्या 81/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2017 को प्राप्त हुआ था।

[सं. एल-40011/1/1999-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2919.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 81/1999) of the Central Government Industrial Tribunal-cum-

Labour Court No. II, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, MTNL, Mumbai and their workman & Others, which was received by the Central Government on 30.11.2017.

[No. L-40011/1/1999-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/81 of 1999

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

MAHANAGAR TELEPHONE NIGAM LTD.

The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House,
Prabhadevi,
Mumbai – 400 028.

AND

THEIR WORKMEN

The General Secretary,
Bombay Telephone Canteen Emp. Assn.,
C/o. Prabhadevi Telephone Exchange
Canteen, I Floor, Dadar [W],
Mumbai – 400 028.

APPEARANCES :

FOR THE EMPLOYER : Mr. V. Narayanan, Advocate

FOR THE WORKMEN : Mr. M. B. Anchan, Advocate

Mumbai, dated the 4th September, 2017

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-40011/1/99/IR (DU) dated 05.04.1999. The terms of reference given in the schedule are as follows :

> "Whether the action of the Employer, Mahanagar Telephone Nigam Ltd. Chief General Manager, Prabhadevi Mumbai in retrenching the services of S/Sh. 1) P.S. Naik, 2) M.T. Masnaik, 3) S.K. Shetty, & 4) S. Kumar who were working at Vile Parle Telephone Exchange is legal and justified ? If not, to what relief the workmen are entitled ?"

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. The General Secretary, Bombay Telephone Canteen Emp. Assn. filed statement of claim Ex.7. Association pleaded that the concerned workmen were appointed as Bearers on 20.4.83, 1.7.83, 1.7.83 & 21.12.84 respectively in Vile Parle Telephone Exchange departmental canteen of Mahanagar Telephone Nigam Ltd., Mumbai. Since then they were continuously working without any break in service and their service records were unblemished, they were appointed but they were not given any appointment letters. Prior to 1988 there were about 900 employees working in this Vile Parle Telephone Exchange and the canteen required is of 8 type with 19 canteen employees. However, B-type canteen was run with only 14 employees. Vile Parle Telephone Exchange was bifurcated in the month of February 1988 and on bifurcation the office of area manager was shifted to Jeevan Seva Extn. Bldg., S.V. Road, Santacruz [W], Bombay w.e.f. 3.2.1988. When Vile Parle Telephone Exchange was bifurcated, about 30 staff of Vile Parle Telephone Exchange were transferred to Jeevan Seva Extn. Bldg. Telephone Exchange. Along with 350 staff, 4 concerned workmen in this reference were also transferred to Jeevan Seva Extn. Bldg. Telephone Exchange departmental canteen,

a branch of Vile Parle Telephone Exchange departmental canteen. In 1990 canteen management decided to give the Jeevan Seva Extn. Bldg. Telephone Exchange departmental canteen on contract basis and accordingly the concerned workmen were transferred to Vile Parle Telephone Exchange departmental canteen from 1.4.1990. Subsequently, they were retrenched from service w.e.f. 30.9.90 without any notice and without payment of retrenchment compensation.

4. The association pleaded that the management has not followed section 25F of ID Act, 1947 as they were not paid retrenchment compensation. As such the retrenchment of concerned workmen is illegal, invalid and ab-initio. They are therefore deemed to be continued in service and entitled to full back wages and continuity of services.

5. The association has also pleaded that the management has reduced the staff of the canteen by retrenching the services of the concerned workmen for which it has not given notice under section 9A of the I.D. Act, 1947. As such while retrenching the staff, the provisions of Chapter – V of the I.D. Act, 1947 has been violated and therefore their retrenchment is illegal.

6. The association also pleaded that there were vacancies of Bearers in Vile Parle Telephone Exchange departmental canteen when they were retrenched from service. The action of MTNL in giving Jeevan Seva Extn. Bldg. Telephone Exchange departmental canteen on contract basis is against the provisions of Abolition of contract act. As such the action of MTNL in retrenching the services of the concerned workmen is invalid, illegal and unjustified. They are therefore asking for reinstatement in service with full back wages and continuity of service with consequential benefits such as recommendations of 4th & 5th Pay Commission.

7. MTNL has resisted the claim by filing written statement Ex.10. It is averted that the concerned workmen were casual employees. They were not given any appointment letter. They were not sponsored through any employment exchange and no any service rules were applicable to the concerned workmen. It is then contended that Vile Parle Telephone Exchange departmental canteen was being run and managed by the departmental committee of the Vile Parle Telephone Exchange and as per the constitution of said canteen committee, Divisional Engineer was Chairman and Sub-Divisional Engineer was the Secretary and the representatives of the staff members as also the union were committee members of the same. MTNL is not on the statutory obligations to run and manage the said canteen which was being run as a welfare major for which the portion of MTNL premises has been allowed to be used for the purpose of the canteen by departmental canteen committee. The MTNL is only being paying the subsidy to the extent of 70% of the wages of the employees working as regular employees having appointment order of the Department of Tele-communication whereas 30% of wages were being paid from the profits earned from the sale of canteen items. MTNL service rules were applicable to those who are not canteen employees. None of the concerned employees mentioned in the reference were issued any appointment letter from the Department of Tele-communication and as such neither the MTNL nor the Department of Tele-communication, New Delhi have or had any control over these employees unlike other regular workmen. As such there is no employer-employee relationship between the MTNL and the concerned workmen.

8. It is also a case of the MTNL that prior to 31.8.90 the building in which the Vile Parle Telephone Exchange was functioning was accommodating the administrative staff of entire zone suburb area from Bandra to Dahisar as the employees working in the said building at that time were more than 500. The category of the canteen for the said strength was category-B requiring 14 employees but on account of shifting of administrative office from Vile Parle building to LIC building at Santacruz about 230 staff members being administrative staff were shifted to LIC building at Santacruz reducing the strength of the staff working at Vile Parle Telephone Exchange building to below 500. Because of which category of the said canteen was reduced from category-B which could be run by maximum 14 employees to category-C which could be run by 10 employees. Hence the services of the concerned workmen were terminated w.e.f. closing hours of 30.9.90 vide termination order dated 31.8.90 on last-cum-first-go basis. As such the concerned employees working in the canteen do not come under the purview of I.D. Act, 1947.

9. MTNL has denied that section 9A, 25-F, Chapter-V [section – 25 k to 25 u] of I.D. Act, 1947 are applicable to the present case. It is also denied that LIC building departmental canteen is given on contract basis against the provisions of Contract Labour Act, 1970. It is prayed that reference be rejected with costs.

10. The concerned workmen have filed rejoinder Ex.12 contending therein that the issue as regards the maintainability of the reference has been decided by this tribunal by its award dated 1.4.1996 in Ref. CGIT-2/88/1993 with regard to very same departmental canteen. It is then contended that ALC held conciliation proceedings. Since the management did not attend the conciliation proceedings, the same ended in failure. But since Government did not refer the dispute the association has filed writ petition in 1998 and Hon'ble Bombay High Court by its order dated 12.2.99 has directed the Government to refer the dispute to the industrial tribunal. Hence Government referred the dispute vide order dated 5.4.99. The association therefore submits that the delay is on the part of management and the Government. As such there is no delay or latches on the part of workmen.

11. Following issues were framed at Ex.14. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the reference suffers from latches ?	No
2.	Whether the action of the management in retrenching the services of the workmen mentioned in the reference is legal and justified ?	No
3.	If not, what relief the workmen are entitled to ?	As per final order

Reasons

Issue No. 1

12. Learned Counsel for the MTNL submitted that the concerned workmen had taken 5 years for filing WP No. 2154 of 1998 after the alleged failure report made by ALC on 15.12.1993. The failure report was ex-parte. Since it is made merely on the strength of correspondence produced by the union. In view of that, the submission is that the reference suffers from un-explained delay and latches and hence the reliefs cannot be awarded in favour of the workmen.

13. However, in the context it is necessary to mention that the concerned workmen after submitting failure report were expecting the Government to refer the dispute to the tribunal. It appears that the Government did not refer the dispute and therefore the association filed writ petition in 1998 and it is only after the order of Hon'ble Bombay High Court dated 12.2.99, the Government referred the dispute vide order dated 5.4.99. The association has taken necessary steps and has raised the dispute by its letter dated 18.9.90 and ALC held conciliation proceedings. Since the management did not attend the conciliation proceedings, the same ended in failure and on failure of the conciliation the report was sent to the Government in 1993. Only because the Government did not refer the dispute the association has to file writ petition in 1998 and thereafter the order came to be passed by Hon'ble Bombay High Court directing the Government to refer the dispute within two months to the industrial tribunal. In view of this it can be said that the delay has been explained properly by the association. Infact, there is no delay or latches on the part of concerned workmen in raising the dispute which they raised by its letter dated 18.9.90. In view of these facts I hold that the reference does not suffer from latches. This issue is therefore answered accordingly as indicated against it.

Issue Nos. 2 & 3

14. It is the contention of the management that as per the notification dated 11.12.79 and 18.2.82, the departmental run canteens in the central Government offices were excluded from the definition of the industry under section 2(j) of I.D. Act and as such the employees working in such canteen do not come under the purview of I.D. Act.

15. In this respect section 2 (j) of the act defines what is mean by industry. The definition gives meaning of industry and also includes certain things in the industry. After the case of Bangalore Water Supply & sewerage Board V/S. A. Rajappa 78 LAB IC 467. The question is to be asked is, not what is industry but it is what is not an industry.

16. It was tried to argue on behalf of the management that as per rule 16 (ii) of Departmental Canteen Rules form in industrial dispute act vide letter dated 18.2.1982 the canteen which is run departmentally in the Central Government offices are excluded from the definition of industry. No such rules are produced. On the contrary the Ministry of Labour & Rehabilitation of India, New Delhi addressed a letter to Shri Sagar Mukherji, M.P. wherein it is observed that there was question before them whether the Departmental Canteen should be treated as industry or not under the I.D. Act. After due consideration, they found that unless exception is proved under the I.D. Act canteens will be treated under the definition of industry under the I.D. Act. If this is so then it has to be accepted that the Government has taken decision to take these canteens as industry.

17. The canteen is run for the welfare of the industrial workers. It is a part & parcel of industrial establishments and therefore is an industry within the meaning of section 2 (j) of the I.D. Act. It has to be said that it is a factory under the Factories Act.

18. There was an appeal No. 21 of 1989 in WP No. 3298 of 1998 between Bombay Telephone Canteen Employees Association V/S. M.C. Venkatraman & Ors. Their Lordship while deciding the matter on the submission made by the Learned Counsel have observed

> "An apprehension was voiced on behalf of the appellant that in case the dispute goes before the competent Authority under the relevant statute, and objection might be raised on behalf of the respondent authorities

that since the members of the Association are employed in canteen run departmentally by the respondent Corporation which is State, the said competent authority would not have jurisdiction to adjudicate the dispute. We do not see any valid reason for the entertainment of such apprehension nor have any doubt that even such objection is realized it is bound to meet its pre-destined fate. However, to allay the apprehension, a statement has been made on behalf of the respondent authorities that no such objection would be taken before the competent Authority."

For all these reasons it has to be said that the departmental canteen of MTNL is an industry within the meaning of section 2 (j) of the I.D. Act.

19. The next submission of the Learned Counsel for the management is that the concerned workmen are not regular employees. None of them were issued any appointment letter from the Department of Tele-communication, Govt. of India, New Delhi and as such there is no employer – employee relationship between MTNL and said 4 workmen.

20. In this respect the evidence has come on record that the concerned workmen were employed somewhere in 1983-84 in Vile Parle Telephone Exchange canteen of MTNL, Mumbai. They were continuously in service till their retrenchment. It is not a case of the management that they have not worked for 240 days in 12 months. It is affirmed by the witness of the union that the concerned workmen were doing the job of regular employees. Even it is not in dispute that when these workmen were retrenched there were other employees employed in the said exchange and they were taking the benefits of canteen. The management witness admitted that the concerned workmen were working since 1983 as Bearers. He even admits that there were 500 to 700 workers working at Vile Parle Telephone Exchange at the time when their services came to be terminated since 30.9.90.

21. That apart it appears to be the case of management that prior to August 1990, the building which Vile Parle Telephone Exchange was functioning accommodating the administrative staff of entire Zone suburb area from Bandra to Dahisar as the employees working in the said building at that time were 500, the category of canteen for the said strength was Category-B requiring maximum 14 employees but on account of shifting of administrative office from Vile Parle building to LIC building at Santacruz, about 230 staff members were shifted to LIC building at Santacruz reducing the strength of the staff working at Vile Parle Telephone Exchange building to below 500 and because of that category of the said canteen was reduced from Category-B which could be run by maximum 14 employees to Category-C which could be run by 10 employees and therefore the termination order dated 31.8.1990 was issued on last-cum-first-go basis i.e. principles underline under section 25-G of the I.D. Act, 1947.

22. In this respect the evidence that has come on record is to the effect that there were about 900 employees working in Vile Parle Telephone Exchange and canteen required is of A-type with 19 employees. Even the management witness has admitted in his cross-examination that there were about 900 workers working in MTNL, Vile Parle Telephone Exchange. He even admits that at Vile Parle Telephone Exchange it is A-type canteen since for 900 employees, A-type canteen is required. He admits that for running A-type canteen staff of 19 is required. He even admits that in 1988 there was bifurcation and the office of Area Manager was shifted to Jeevan Seva Extn. Bldg., S.V. Road, Santacruz [W], Bombay. He admits that 350 employees were transferred from Vile Parle Telephone Exchange to Jeevan Seva Extn. Bldg., S.V. Road, Santacruz [W], Bombay. He pleaded ignorance to the effect that these 4 concerned employees were also transferred to Santacruz. But in view of these admissions given by this witness of the management [Ex.39] it can be said that the management had to maintain the canteen of A-type having minimum 19 employees. However, there were 14 employees and on 3.2.1988 out of these employees employer shifted 350 employees to new office at Jeevan Seva Extn. Bldg., S.V. Road, Santacruz [W], Bombay. At the same time these concerned workmen were shifted to the said canteen and they worked till their services came to be retrenched. Their retrenchment was on the ground that the departmental canteen at Vile Parle which was of C-type was converted into D-type but while doing this conversion there should have been record to show that the particular employees were working on that exchange and it was necessary to convert the canteen in the particular category. No such record is there and therefore action of the management in respect of change in the category of the canteen cannot be said to be justified.

23. According to the union, the concerned workers were not given 3 months notice when they were retrenched as contemplated under section 29 N of the I.D. Act. Chapter - V-B of the I.D. Act deals with several provisions for retrenchment and closure of certain establishments. It is clear from section 25 N of the act that when there are more than 100 employees then while effecting the retrenchment, 3 months notice has to be given. The prior permission from the appropriate Government is required to be taken before such retrenchment. No such permission is taken in this particular matter. Even the management witness has pleaded ignorance in respect of issuing of notice under section 9-A of I.D. Act to the concerned workmen. He also pleaded ignorance in respect of permission to be obtained from the Government to retrench canteen employees. If no such permission is taken then it can be said that the concerned workmen were not even paid retrenchment compensation as contemplated under section 25-F of the I.D. Act. It is well settled law that the provisions for retrenchment are mandatory, non-compliance of the provisions declares the action invalid and void ab-initio. As this is done, it has to be said that retrenchment of concerned workmen is void.

24. As seen earlier, it is clear that for a particular number of employees there should be particular number of employees in the canteen. The canteen at Vile Parle Telephone Exchange should have been A-type. Even when the status of the canteen was changed from C-type to B-type at Vile Parle Telephone Exchange, the management has not issued 21 days notice to the workmen as required by the I.D. Act. If the service condition is changed by converting the canteen from C-type to D-type without giving any notice as contemplated under the act then this conversion itself is illegal and not justified.

25. Learned Counsel for the concerned workmen submitted that when the services of the concerned workmen were terminated there were number of vacancies of the Bearers in the various departmental canteens and those vacancies were there at the time when the services of the concerned workmen were terminated. If that is so then the action of the management in terminating the services of the concerned workmen on the basis that the concerned workmen were surplus after conversion of C-type canteen into D-type canteen is also illegal.

26. Considering all these facts I find that the action of management in retrenching the services of the concerned workmen is illegal and unjustified. The issue No.2 therefore answered in negative.

27. Now it has come on record that the concerned workman namely Shri M.T. Masnaik is dead and his legal heirs have been brought on record. In view of that legal heirs of the deceased workman will be entitled to benefits which he would receive by his reinstatement in service.

28. In view of my findings to the above issues, I pass the following order.

ORDER

1. Action of the management of Mahanagar Telephone Nigam Ltd. in retrenching S/Sh. 1) P.S. Naik, 2) M.T. Masnaik, 3) S.K. Shetty, & 4) S. Kumar w.e.f. 30.09.1990 without applying the provisions of I.D. Act, 1947 in the guise of reducing the status of departmental canteen from Type-C to Type-D is in violation of section 9A of I.D. Act, 1947 is not just, legal and proper.

2. Management is directed to reinstate the concerned workmen in service.

3. Management is directed to treat them in continuity in service and pay full back wages within the 3 months from today.

4. No order as to costs.

Date: 04.09.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 21 दिसम्बर, 2017

का.आ. 2920.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, निदेशक डाक लेखा प्रबंधन, पटना एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 32/2014, 33/2014, 48/2014, 50/2014, 51/2014, 52/2014, 53/2014, 55/2014, 60/2014, 61/2014, 62/2014, 63/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.11.2017 को प्राप्त हुआ था।

[सं. एल-40012/05/2014-आईआर (डीयू),

सं. एल-40012/04/2014-आईआर (डीयू),

सं. एल-40012/09/2014-आईआर (डीयू),

सं. एल-40012/11/2014-आईआर (डीयू),

सं. एल-40012/13/2014-आईआर (डीयू),

सं. एल-40012/15/2014-आईआर (डीयू),

सं. एल-40012/16/2014-आईआर (डीयू),

सं. एल-40012/19/2014-आईआर (डीयू),

सं. एल-40012/14/2014-आईआर (डीयू),

सं. एल-40012/12/2014-आईआर (डीयू),

सं. एल-40012/18/2014-आईआर (डीयू),

सं. एल-40012/20/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st December, 2017

S.O. 2920.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 32/2014, 33/2014, 48/2014, 50/2014, 51/2014, 52/2014, 53/2014, 55/2014, 60/2014, 61/2014, 62/2014, 63/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Director Postal Accounts, Patna and their workman, which was received by the Central Government on 22.11.2017.

[No. L-40012/05/2014-IR (DU),

No. L-40012/04/2014-IR (DU),

No. L-40012/09/2014-IR (DU),

No. L-40012/11/2014-IR (DU),

No. L-40012/13/2014-IR (DU),

No. L-40012/15/2014-IR (DU),

No. L-40012/16/2014-IR (DU),

No. L-40012/19/2014-IR (DU),

No. L-40012/14/2014-IR (DU),

No. L-40012/12/2014-IR (DU),

No. L-40012/18/2014-IR (DU),

No. L-40012/20/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1)(d) (2A) of I.D.Act, 1947

Reference No. 32/2014, 33/2014, 48/2014, 50/2014, 51/2014,

52/2014, 53/2014, 55/2014, 60/2014, 61/2014, 62/2014 & 63/2014

Employers in relation to the management of Director Postal Accounts, Patna

And

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearance :

For the Employers : Shri M.M. Khan, Advocate

For the workman : Shri D.K. Verma, Advocate

Industry :- Postal

Dated :- 15/11/ 2017

AWARD

Referance . 32/2014

By order No. L- 40012 /05/2014/IR (DU) dated 12/03/2014, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director postal Accounts Patna to terminate the service of Sri Madan Thakur workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

REFERENCE No. 33/2014

By order No. L- 40012 /04/2014/IR (DU) dated 11/12-03-2014, the Central Government in the Ministry of Labour in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director postal Accounts Patna to terminate the service of Sri Manoj Kumar Ram workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

REFERENCE No. 48/2014

By order No. L- 40012 /09/2014/IR (DU) dated 05.05.2014, the Central Government in the Ministry of Labour in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director postal Accounts Patna to terminate the service w.e.f. 07.06.2013 of Sri Amitesh Kumar workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

REFERENCE No. 50/2014

By order No. L- 40012 /11/2014/IR (DU) dated 12.05.2014, the Central Government in the Ministry of Labour in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director postal Accounts Patna to terminate the service w.e.f. 07.06.2013 of Sri Dashrath Kumar Verma workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

REFERENCE No. 51/2014

By order No. L- 40012 /13/2014/IR (DU) dated 12.05.2014, the Central Government in the Ministry of Labour in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director postal Accounts Patna to terminate the service of Sri Sudama Prasad workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

REFERENCE No. 52/2014

By order No. L- 40012 /15/2014/IR (DU) dated 05.05.2014, the Central Government in the Ministry of Labour in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director postal Accounts Patna to terminate w.e.f 07.06.2013 the service of Sri Arbind Kumar Rajak workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

REFERENCE No. 53/2014

By order No. L- 40012 /16/2014/IR (DU) dated 05.05.2014, the Central Government in the Ministry of Labour in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director Postal Accounts Patna to terminate the service of Sri Ashok Kumar workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

REFERENCE No. 55/2014

By order No. L- 40012 /19/2014/IR (DU) dated 08.05.2014, the Central Government in the Ministry of Labour in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director Postal Accounts Patna to terminate the service of Sri Tarun Kumar workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

REFERENCE No. 60/2014

By order No. L- 40012 /14/2014/IR (DU) dated 26.05.2014, the Central Government in the Ministry of Labour in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director Postal Accounts Patna to terminate the service w.e.f. 07.06.2013 of Sri Pankaj Kumar workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

REFERENCE No. 61/2014

By order No. L- 40012 /12/2014/IR (DU) dated 26.05.2014, the Central Government in the Ministry of Labour in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director postal Accounts Patna to terminate the service w.e.f 07.06.2013 of Sri Karan Kumar workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

REFERENCE No. 62/2014

By order No. L- 40012 /18/2014/IR (DU) dated 26.05.2014, the Central Government in the Ministry of Labour in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director postal Accounts Patna to terminate the service of Sri Mirtyunjay Kumar workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

REFERENCE No. 63/2014

By order No. L- 40012 /20/2014/IR (DU) dated 27.05.2014, the Central Government in the Ministry of Labour in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Director postal Accounts Patna to terminate the service w.e.f 07.06.2013 of Sri Santosh Kumar workman when he demanded for regularization is valid ? If not, what relief the workman is entitled for?"

2. All cases received from the Ministry of Labour in different dates. After receipt of the references , both parties are noticed. Workman files written statement on different dates, and management also files their written statement. Thereafter rejoinder and documents filed by both sides. One witness examined from each side. Documents of both side marked individually in each case.

3. The case of the workmen is that all of the workmen have been working against permanent vacancy as per the order and direction of the management continuously as such they have put in more then 240 days attendance each calendar year. They were rendering services and producing goods for the benefits of the management but the management neither paying them their regular wages and other benefits.

4. It is further submitted by the workmen that they were working as permanent employee against permanent vacancy till then the management not paying the concerned workman wages and other attendant benefits like other similarly situated workmen. They repeated insisted for their regularization but management stopped them from duty without assigning any reasons. Thereafter the workmen represented before the management against the illegal stoppage from service but the management did not take any positive steps.

5. It is also submitted by the workmen that the termination of the workmen is illegal and retrenchment in utter violation of the mandatory provision of section 25 F of the Industrial Dispute Act. 1947. Seeing no other alternative remedy they raised the Industrial Disputes.

6. On the other hand, the case of the management is that the workmen never worked on regular basis in the establishment . The establishment was taking the services of daily wage workers occasionally as per its requirement. Such workmen have no right to seek absorption on permanent basis as it amounts to back door entry in the public employment. They were falsely claimed that they worked for more then 240 days in each calendar year during the last five years.

7. It is also submitted that due to shortage of staff in Gr. D /MTS cadre, Office of the Director and Accounts (Postal) Patna engaged mazdoor/labours from market/outside as and when required and they were paid wages as prescribed rate issued by the labour Deptt. of Bihar Govt. so question of termination of workmen does not arise.

8. It is further submitted by the management that the workmen have never worked as permanent workmen against permanent vacancy hence the workmen have not been appointed and terminated by the management. Mere hiring of services, on certain occasion would not give right to raise the dispute for regularization in permanent service, particularly in this case of public employment.

9. These all reference case are received for decision by this Tribunal, and all 12 cases as mentioned above are similar nature of case hence all are heard analogously and award be also passed analogously.

10. Admittedly the workmen concerned were rendering services in postal department long back continuously but as per new circular the workmen who were rendering service were interviewed and, who could not qualify, are asked by the management to quit. Admittedly the workmen were daily wager who have no right to be regularized as argued by the management .

11. Moreover it is the policy of the Government, that the back door entry in any Govt. job should be stopped, and this Tribunal is also not in favour of back door entry but the question is the workmen who rendered services for long time as daily wager if unable to regularized they be not thrown out of employment.

12. On perusal of all records of these cases it is noticed that all workmen received official records and equipments from higher authority, and received stationeries from the management under postal letter head.

13. On perusal of Ext. W-1 Series of Ref. No. 50/2014, it is official note signed and approved by many higher officers. it is noticed that the workman Dashrath Kumar Verma has worked continuously as electrician which is noted below:-

5 Jan to 30 Jan. 2004	**:**	**18 days**
3 Feb. to 27 Feb. 2004	**:**	**17 days**
1 March to 31 March 2004	**:**	**19 days**
1 April to 30 April 2004	**:**	**17 days**

05 May to 31 May 2004	**:**	**19 days**
1 June to 30 June 2004	**:**	**22 days**
1 July to 30 July 2004	**:**	**22 days**
2 Aug. to 31 Aug. 2004	**:**	**22 days**
1 Sept. to 30 Sept. 2004	**:**	**22 days**
1 Oct. to 29 Oct. 2004	**:**	**14 days**
1 Nov. to 30 Nov. 2004	**:**	**19 days**
1 Dec. to 31 Dec. 2004	**:**	**23 days.**

Total 234 days

14. Sri Dashrath Kumar Verma worked as Electrician for 234 days which is approved. It is also noted that he was also working on Saturday and Sunday on special approval. As per order of Apex court holiday is count as working days. It means he worked for 240 days. On calculation it is also noted that in 2005 he also worked 210 days. It is also noticed that six month certificate also issued by Accounts Officer of Postal Department, Patna.

15. On purusal of cross-examination WW-1 in Ref. 32 of 2014, he says that he is a permanent employee and prior to that he was also a daily wager, he joined as Chaparasi. The workmen were doing chaparasi work i.e working of giving water, cleaning table etc.

16. As per cross-examination of MW-1 in Ref. 32/14 he admitted that "they were daily wager in our department, and they paid weekly wages and the document relating payment to the workmen is available and I can file if asked." As per the satement of the witness of management the workmen files a petition dated 17/05/2016 calling for documents relating to payment of wages to the workmen but after receiving the petition the same is not filed by the management. Hence it is felt that the real fact is to supress by the management. From it appears all workmen are working continuously.

17. In view of judgement of Supreme Court in **AIR 1986 SC 458 American Express Vs workmen of American Express and as well as RBI Vs Tikka Mazdoor AIR 1986 SC 132** in which ir is stated that all Sunday and paid holiday shall be taken into Account for calculation of 240 days as provided U/S 25 B of I.D Act.

18. On purusal of record that It is proved that neither compliance of Section 25 F of the I.D Act nor they paid any retrenchment compensation to the workman. Hence it is felt that the worked for 240 days in a year.

19. In this context the order of Hon'ble **Punjab & Haryana High Court,** which is reported in **2014 LLR 1210 in LPA No. 1200/2014 (O&M)** it is held that and quoted below

> ***"Termination of services of a workman, who has worked for more than 240 days without making compliance of section 25 F of I.D Act is illegal attracting reinstatement with back-wages."***

20. Considering the facts and circumstances of these case, I hold that Sri Dashrath Kr. Verma be regularized at once and other all 11 workmen of above mentioned cases be taken into job as daily wager at once to save them from starvation, they all be taken in job within one month, and when the vacancy arises absorb them since they provided services.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2921.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मिनिरल एक्सपलोरेशन कॉरपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 176/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-29012/77/1997-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2921.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 176 of 1997) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mineral Exploration Corporation Ltd. and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-29012/77/1997-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 176/1997

Employer in relation to the management of Mineral Exploration Corporation Ltd.

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand Industry : Mineral

Dated- 6/12/2017

AWARD

By Order No. L-29012 /77/1997-IR(M) dated 21/10/1997, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Mineral Exploration Corporation Ltd., Ranchi in terminating services of Shri Arun Kumar Singh is Proper and justified ? If not, to what relief the concerned workman is entitled to?"

2. After receipt of the reference , both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2922.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 170/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/94/1999-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2922.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1,

Dhanbad (Ref. No. 170 of 1999) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/94/1999-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 170/1999

Employer in relation to the management of Barora Area, M/s. CCL

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : None

For the workman : None

State : Jharkhand Industry : Coal

Dated- 4/12/2017

AWARD

By Order No. L-20012/94/1999-IR(C-I) dated 14/10/1999, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management in not regularising Shri Jagdish Dusadh as a Security Guard in Gr. "C" with protection of wages is justified? If not, to what relief the concerned workman is entitled and from what date?"

2. After receipt of the reference, both parties are noticed. But none appears from either side. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2923.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स टिस्को लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 94/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/369/1995-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2923.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 94 of 1997) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. TISCO Ltd. and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/369/1995-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 94/1997

Employer in relation to the management of M/s. TISCO Ltd.

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand Industry : Coal

Dated- 6/12/2017

AWARD

By Order No. L-20012/369/1995-IR(C-I) dated 01/04/1997 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

" (i) Whether the action of the management of M/s. TISCO Ltd. is justified in terminating the services of Shri Sheo Narayan Turi w.e.f. 26/08/1993? If not, to what relief is the concerned workman entitled?

(ii) whether the demand of the Union for dependent employment of Shri Nirmal Kumar Sarkar, Dependent son of Sh. S.K. Sarkar from the management of M/s. TISCO is legal and justified ? If so, to what relief is the concerned workman entitled?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workmen, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2924.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 92/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/187/1993-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2924.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 92 of 1996) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/187/1993-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 92/1996

Employer in relation to the management of Block II Area of M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand Industry : Coal

Dated- 6/12/2017

AWARD

By Order No. L-20012/187/93-IR(C-I) dated 03/10/1996, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

" Whether the demand by the Union in 1991for promotion of Shri Anil Kumar Sinha as Electrician in category –V from May 1980, in category-VI from May 1983 and subsequent promotion to Grade C on the basis of his seniority by the management of Block II Area of M/s. BCCL Nawagarh is legal and justified? If so, to what relief is the workman entitled?"

2. After receipt of the reference , both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2925.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 72/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/511/1998-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2925.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 72 of 1999) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/511/1998-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 72/1999

Employer in relation to the management of Govindpur Area of M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand Industry : Coal

Dated- 5/12/2017

AWARD

By Order No. L-20012/511/1998-IR(C-I) dated 29/04/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of BCCL in not protecting wages of Sri Bodho Mahato at the time of regularisation in category-IV is legal and justified? If not, what relief the workman concerned is entitled to?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2926.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 66/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/44/2014-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2926.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 66 of 2014) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. SAIL and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/44/2014-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 66/2014

Employer in relation to the management of Jitpur Colliery of M/s. SAIL

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri B.B.Pandey, Advocate

Industry : Coal

Dated- 5/12/2017

AWARD

By order No. L- 20012/44/2014/IR (C-I) dated 04/06/2014, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Jitpur Colliery of SAIL in stopping the House Rent Allowance in respect of S/Shri Maheshwar Das and Chandrika Ram from July 2012 is fair and justified ? To what relief the concerned workmen are entitled to ?"

2. The case is received from Ministry of Labour on 17.06.2014. The workman files written statement on 20.04.2015 and the management files their written statement on 20.11.2015. Thereafter rejoinder and documents filed by the parties. One witness examined on behalf of the management and no evidence produced on behalf of the workman. But documents of workman is marked as W-1 and W-1/1.

3. Short point to be decided in the case as to whether the workmen are entitled to get house rent allowance or not. The management submitted that house rent allowance are provided but presently the workman are provided with residential accommodation, hence they are not entitled to house rent allowance . But the workman representative subtitted that, the quarters provided to them was not as per the entitlement.

4. The management representative submitted , that large number of surplus quarters are laying vacant due to shortage of staff, and they will provide appropriate quarters after getting regular application from the employee.

5. Hence the applicant are directed to file application for required quarters, so that they will be provided.

6. Therefore , it is ordered, the workman be provided with appropriate quarters by the management , if applied for. Tribunal decline to grant any house rent allowance to them.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2927.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 53/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/11/2006-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2927.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 53 of 2006) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/11/2006-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 53/2006

Employer in relation to the management of Sijua Area of M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri N.M.Kumar, Advocate

Industry : Coal

Dated- 4/12/2017

AWARD

By order No. L- 20012 /11/2006/IR (C-I) dated 01/06/2006, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of Nichitpur Colliery of M/S BCCL in not providing employment to Shri Munilal Manjhi, the dependant son of late Chhotu Manjhi is justified? If not, to what relief is the said dependent son of Late Chhotu Manjhi entitled ?"

2. The case is received from Ministry of Labour on 20.06.2006. The workman files written statement on 01.08.2006. But after long delay the management files their written statement on 02.09.2010. One witness examined on behalf of the workman but no witness examined on behalf of the management. Documents of the workman marked as W-1 to W-7 but the management has not filed any documents .

3. The case of the workman is that Late Chhotu Manjhi was the deceased workman working in Nichitpur Colliery of Sijua Area of M/S BCCL and he died on 12.04.1995 in the Central Hospital , Dhanbad in course of his employment. After death of Late Chhotu Manjhi , smt Surajmuni Devi wife of deceased workman demanded job in place of her husband as per 9:3:2 of NCWA- V. and after one year the management called for interview. At the time of interview she stated that she had 19 years old son. Hence the management did not provide employment to her, who was 50 years old lady when her son is adult. Therefore she was directed to endorse her son for employment and submits all relevant document.

4. It is further submited that , In compliance with the suggestion given by the management the widow files all relevant paper before the management for employment to her son Munilal Manjhi. But the management regretted the same as belated case of 1995.

5. On the other hand the case of the management is that Late Chhotu Manjhi was a permananet workman of Nichitpur Colliery, who died on 12.04.1995 . Smt Surajmuni Devi claimed herself to be the wife of Late Chhotu Manjhi had applied for employment on compassionate ground but her application was rejected as to she crossed the age of 45 years and according to provision of NCWA a female spouse is not entitled for employment if her age is more than 45 years. Sri Muni lal Manjhi submitted his application dated 24.08.1999 for employment on compassionate ground in place of his deceased father.

6. It is further submitted by the management that, his representation was regretted by the competent authority as it was a belated case.

7. This is the case of dependant employment . The workman applicant filed an application for job . The concerned workman died on 12.04.1995. Thereafter his wife filed an application for job in place of her deceased husband . Her claim was regretted as she was more than 45 years and having a major son. After refusal of the application of the mother's claim, her son the present application for job on 24.08.1999 i.e. 4 years and odd from the death of his father .

8. On perusal of document filed by the workman, it is noticed that the management took one year time only to regret the claim of Smt Surajmuni Devi wife of deceased workman and 2 years time taken to regret the claim of his son Sri Munilal Manjhi. It is also noticed that, the FOC was done by ALC on 23.01.2005 and the reference was received by the Tribunal on 20.06.2006 by order dated 01.06.2006, it means very much time is taken by all party of this case. It is also noticed that the name of the applicant also appears in the service excerpt.

9. As per letter dated 13.08.1996 marked as W-3, the management intimated to Smt surajmuni Devi, that her application for job is regretted, if you agree for monetary compensation, file the papers as early as possible. But in this case, it is not proved whether monetary compensation was given to the widow of the deceased workman after the death of her husband . If the same has not been paid to the widow of the deceased workman, his son i be given job waiving formality .

10. Considering the facts and circumstances of this case, I hold that the action of the management of Nichitpur Colliery of M/S BCCL in not providing employment to Shri Munilal Manjhi, the dependant son of late Chhotu Manjhi is not justified, he be given job waving formality, within 30 days after publication of award, provided his mother has not received any monetary compensation from management.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2928.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 43/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/423/1994-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2928.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 43 of 1997) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/423/1994-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 43/1997

Employer in relation to the management of Sijua Area of M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : None

For the workman : None

State : Jharkhand Industry : Coal

Dated- 6/12/2017

AWARD

By order No. L-20012/423/1994-IR(C-I) dated 05/02/1997 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the claim of the union that the management of Sijua Area of M/s BCCL had illegally deined to allow/re employed S/Sh.Ram Sarower Dushadh, Ram Balak Rajwar, Mehangu Bhuinya, Shankar Dusadh and Chaitu Hari is Correct and justified ? If so, to what relief are these, persons entitled?

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workmen, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2929.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 37/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/503/1995-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2929.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 37 of 1997) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/503/1995-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 37/1997

Employer in relation to the management of Kustore Area of M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : None

For the workman : None

State : Jharkhand Industry : Coal

Dated- 6/12/2017

AWARD

By order No. L-20012/503/1995-IR(C-I) dated 20/01/1997 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of the Union for re-assessment of the age of Shri Dilchand Mondal U/G Trammer by the Apex medical Board is justified? If so, to what relief is the concerned workman entitled?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2930.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 30/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/89/2013-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2930.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 30 of 2014) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/89/2013-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 30/2014

Employer in relation to the management of Bastscolla Area M/s. BCCL

AND

Their workman

Complaint case No. 3/2016

Arising out of Ref. case No. 30/14

Raj Kumar Dusadh & others
Through Colliery Karmchari Sangh …Complainant

And

Project Officer
Ghanudih Colliery, Bastacolla Area
M/S BCCL …Opp.Party

Present : Shri R.K.Saran, Presiding Officer

Appearance :

For the Employers : Shri Ganesh Prasad, Advocate

For the workman : Shri U.P. Sinha, Advocate

Industry :- Coal

Dated :- 16/11/ 2017

AWARD

By order No. L-20012/89/2013 /IR (CM-1) dated 05/ 03/2014, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of Bastacolla Area of M/s. BCCL in not regularizing /giving proper designation to Sri Raj Kumar Dusadh, Sri Ram Babu Mallah, Sri Musai Jaiswara, Sri Ram jeet Bhuia, Sri Awadh Rawani, Sri Sushil Mahato, Sri Dukhi Bhuia and Bhuneshwar Bhuia in which they have working since long is fair and justified? To what relief the concerned workman is entitled to?"

2. The case is received from Ministry of Labour on 18.03.2014. The Sponsoring Union files their written statement on 22.04.2014 and the management files their written statement on 04.02.2015. Thereafter rejoinder and document filed by the parties. Two witnesses each side examined on their behalf. Documents of the management marked as M-1 and documents of workman marked as W-1 to W-15.

3. The case of the workmen is that these concerned workmen are working on excavation and machinery work from the date of their posting against the permanent post regularly and continuously. Hence as per certified standing Orders, they are entitled to be regularized and given proper designation from the date of expiry of their there months service on the said post or at least from Jan. 1999 after completion of one year with regularly continuous service on their respective post and grade.

4. It is further submitted by the workman that in spite of their admission before the conciliation officer that they are working on those posts and that their names have been processed for regularization and the management did not regularize them and not proper designation . As such the action of the management in not regularising and not giving proper designation is neither legal nor justified and they are entitled for regularization from retrospective effect at least from 1999 with full back wages as per the capacity of excavation machine, they operated and be given Excavation Grade "C".

5. It is further submitted by the Union that as per authorization and permission letter given to the concerned workmen, they have been working in their respective works from the year 1997-98 , as such they are entitled to get the difference of wages of the said excavation Gr. "C" from the date of authorization given to them .The lowest category in which, Dozer Operator, Shovel Operator and Drill Operator is excavation discipline are excavation Gr."C" but the wages are paid as per the capacity of Dozer, Drill or Shovel Machine workmen.

6. It also submitted by the workmen that by submitting rejoinder dated 19/06/12,the management admitted that the concerned workmen have been working in the work shown against them and the proposal for their regularization , has since been sent to Area Officer, Bastacolla Area for issuance of proper Officer Order as per system prevailing in the company. But in spite of the fact the management did not regularize them. Hence the conciliation failed and dispute arose.

7. On the other hand the case of the management is that M/s. BCCL is a Govt. Company registered under company's Act 1956 and that being the position it is State within the meaning of Art. 12 of the constitution of India. Therefore it has to follow the mandatory provision of Art. 14& 16 of the constitution of India. Upon considering the above provision of the constitution, the Govt. of India constituted a JBCCI consisting the representative of management as well as the workmen and the JBCCI formulated and circulated Cadre Scheme for the Career growth of different Cadres. No body can, even the management, regularize or promote any workmen de-hors the provisions and procedure laid down in the cadre scheme.

8. According to the decision taken in the meeting of JBCCI–VI, the Cadre Scheme has been finalized by the Technical sub-Committee of JBCCI-VI for different Cadres including Excavation Cadre. There the promotion channel for the Excavation personnel are mentioned here under.

Sl.No.	Designation	Gr/Cat	Qualification	Eligibility	Mode of selection
1.	Dozer Operator(T)	Exc. Gr.D	Class VIII with H.V licence and Endorsement For tractor Driving	1 Year Successful completion of Training In HEMM	Selection Trade Test
2.	Shovel Operator (T)	-do-	Matriculation	-do-	Selection Aptitude Test
3.	Drill Operator (T)	-do-	Class-VIII	2 years Training	-do-

9. It is further submitted by the management that all the workmen concerned in this case are Miner Loader in piece rate categories. They have not been regularized as time rated workmen in T.R Categories. Ist of all they should be regularized in T/R Jobs. There are some criteria for regularizing the P/R workers in T/R jobs which is under process subject to availabilities of vacancies. As per cadre scheme the Dozer Oprator (T) has to obtain class VIII pass certificate and should obtain HV Driving License but no one has obtained the HV Driving License from the competent Autority hence they are not entitled for regularization as Dozer Operator (T) in the company.

10. It is also submitted by the management as per W/S of the workmen these three workmen Sri Ram Babu Mahallh, Sri Ranjeet Bhuia and Sri Bhuneshwar Bhuia are working as shovel Operator. As per cadre Scheme Shovel Operator Should be Matriculate for regularization as Shovel Operator (T) but no one has passed Matriculation Examination as such they are not entitled for regularization as Shovel Operator (T).

11. The management also submitted that Sri Sushil Mahto is working as Drill Operator but as per authorization he is working as Drill Operator from 11.11.2011 whereas the dispute raised on 20.02.2012.

12. As such Sri Sushil Mahto has not completed 2 yeas Training as Drill Operator (T). The eligibility for regularization as Drill Operator is 2 years training who has not completed, hence is not entitled for regularization as Drill Operator (T).

13. The Short point to be decided in this reference is whether workmen concerned are to be regularized in their proper designation or not. Both parties file written statement, counter and rejoinder. In the reference, it is not mentioned that in what designation they are to be regularized. The case of the workmen is that they have been working as dozer Operator, Shovel Operator and Drill Operator. They have said that management admitted that fact before the conciliation Officer.

14. The management submitted that the workmen are working General Mazdoor as piece rated worker even they are not regularized as time rated worker. Their services may be taken by management at any time, but that will not be considered as claim or right of the workmen to be regularised on higher grade which is not possible. Management also given option to them they may work in their own grade as General Mazdoor.

15. As per cross examination of the workman WW-1 (Sri Ranjeet Bhuia) I am also deposing on behalf of the Bhuneshwar Bhuia and he say that I am not matriculate. As per Cross examination of Sri Raj Kumar Dushad (WW-2) he is admitted that, I have not passed Class-VIII The cross examination of WW-2 some part is quoted below :-

> **" For Driving Dozer, heavy Driving License is required for a driver. I am driving dozer since 1998. I have filed my driving license which will clear every thing . I was not called to give a test to drive dozer. I have not passed class-VIII."**

Xxxxx

16. On perusal of both evidence of the workmen, fact admitted by the workmen that his qualification not fulfill the criteria i.e Ranjeet Bhuia is not matriculate and Raj Kumar Dusadh is not class-VIII passed. As per cadre scheme Shovel Operator must be matriculate and Dozer operator /Drill Operator is class-VIII passed, and all are by selected trade Test an Aptitude test.

17. The management witness says in his evidence that Shovel Operator and Dozer Operator are time rate but the workmen concerned is piece rated workmen.

18. On perusal of Driving license of Sri Raj Kumar Dushad marked as Ext-W-12 in which it is mentioned that " date of first issue of driving license:- 17.03.2010 and date of additional vehicle were included i.e HGV on 19.05.2010 and Tractor on 07.02.2011" but as per chief of evidence of Sri Raj Kumar Dusadh (WW-2) " I was engaged firstly as Dozer Operator (Trainee) from 23.06.1998". Then How can it is possible that he was engaged as Dozer operator from 1998 whereas his license is firstly issued on 17.03.2010, then without license how he operate Dozer.

19. During pendency of this case the workmen Sri Raj Kumar Dusadh & other file a complaint petition Numbered as Complaint case no. 3/16, praying their in that their work nature and service condition is changed. I found that the all workmen is designated as Miner Loader /General Mazdoor and the management placed him in original post.

20. Moreover if any person works in any higher grade or post for certain time or period, can not be regularized unless posts are available, after due promotion. Hence the claim of regularization of all workmen mention in schedule are hereby refused and complaint petition is also rejected.

21. Considering the facts and circumstances of this case , I hold that the action of the management of Bastacolla Area of M/s. BCCL in not regularizing/giving proper designation to Sri Raj Kumar Dusadh, Sri Ram Babu Mallah, Sri Musai Jaiswara, Sri Ram jeet Bhuia, Sri Awadh Rawani, Sri Sushil Mahato, Sri Dukhi Bhuia and Bhuneshwar Bhuia in is fair and justified. Hence they are not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2931.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भोवरा (एन) यू. जी. माइन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 29/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/278/1998-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2931.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 29 of 1999) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bhowra (N) U.G. Mines and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/278/1998-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 29/1999

Employer in relation to the management of Bhowra (N) U.G. Mines

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand Industry : Coal

Dated- 5/12/2017

AWARD

By order No. L-20012/278/1998-IR(C-I) dated 19/02/1999 the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Bhowra(N)U.G Mines of M/s. BCCL in not regularizing Smt. Mehrun Bibi, Rakhi B.P., Surti Devi and Pobi Bhuia in time – rated job is justified ? If not, to what relief the concerned workmen are entitled ?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2932.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 27/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/300/1997-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2932.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 27 of 1998) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/300/1997-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 27/1998

Employer in relation to the management of Jealgora Area of M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : None

For the workman : None

State : Jharkhand Industry : Coal

Dated- 6/12/2017

AWARD

By order No. L-20012 /300/1997-IR(C-I) dated 28/05/1998, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Jealgora Colliery of M/S BCCL in denial to regularise Shri Bijay Kumar Sinha as Sampling Mazdoor is justified? If not to what relief is the workman entitled?"

2. After receipt of the reference , both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2933.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 22/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/72/2010-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2933.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 22 of 2011) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/72/2010-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 22/2011

Employer in relation to the management of P.B. Area of M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri Manash Chatterjee, Rep.

Industry : Coal

Dated- 4/12/2017

AWARD

By order No. L- 20012 /72/2010/IR (C-I) dated 05/04/2011, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of Management of Pootki colliery of M/s. BCCL in not regularising Sri Pundeo Rout as Chainman is fair and justified? To What relief the concerned workman is entitled?"

2. The case is received from Ministry of Labour on 02.05.2011. After receipt of the reference, both parties are noticed. But after long delay, the Sponsoring Union files written statement on 21.06.2013 and the management files

their written statement on 20.05.2014. Thereafter rejoinder and documents filed by the parties. One witness examined on behalf of the workman and no evidence produced on behalf of the management.

3. The case of the Sponsoring Union is that the workman concerned was appointed as Miner Loader and was regularised as time rated worker vide order dated 10.06.1991 as Tyndle in category-IV and he is deployed to work as Chainman in the year 1999 in servey section in the Pootki Colliery and since then he is continuosly working as Chainman . But as per cadre scheme the workman concerned was entitled for regularisation as Chainman in grade "F" w.e.f his deployment as Chaiman in survey section.

4. It is further submitted by the Sponsoring Union that after several representation the management has not regularised him as chainman in grade "F" . but the management granted him SLU vide order dt. 01.04.2004 , 21.02.2006 and 04.01.2013 and at present the management provided him technical supervisory grade "C" but his designation is still tyndle. The management is taking the job of chainman but not regularising him as chainman . Hence Industrial Dispute arose.

5. On the other hand the case of the management is that the workman appointed as Miner Loader as piece rated and on the request of workman was converted from piece rated worker to time rated worker and deputed as tyndel and at present he is category-V. The Sponsoring Union demanding regularisation of workman as chainman . But the post of chainman falls under technical and supervisory staff of survey department and in grade F which is monthly rated, and there is complete ban for regularisation of time rated worker in monthly rated worker. The time rated worker can be promoted in monthly rated job only when there was vacancy accroding to manpower budget and the departmental promotion committee recommended the name of employee after giving equal opprotunity to all eligible candidates.

6. Short point to be decided in this case, as to whether the workman is to be regularised as chainman or not. Both parties file their written statement and rejoinder and document.

7. Admitted fact is that the workman joined as minor loader and regularised as tyndel w.e.f 1999. After that he has been working as chainman in survey section till today and claims to be regularised as chainman.

8. As per order PC/PD/SLP/2013/104 dated 04.01.2013/ 6.02.20013 the concerned workman upgraded as cat-IV to T&S Grade C w.e.f.01.01.2013. it means he is already upgraded as technical and supervisory grade.

9. Since the workman has been rendering service as chainman admitted by the management, it is felt that there is no difficulty in regularising him in the post of chainman.

10. Considering the facts and circumstances of this case , I hold that the action of Management of Pootki colliery of M/s. BCCL in not regularising Sri Pundeo Rout as Chainman is not fair and justified , Hence he be regularise at once as chainman.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 दिसम्बर, 2017

का.आ. 2934.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सी. सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 11/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.12.2017 को प्राप्त हुआ था।

[सं. एल-20012/21/2013-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 22nd December, 2017

S.O. 2934.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 11 of 2013) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 19.12.2017.

[No. L-20012/21/2013-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference : No. 11/2013

Employer in relation to the management of Barka Sayal Area of M/s. CCL

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer

Appearances:

For the Employers : None

For the workman : None

State : Jharkhand Industry : Coal

Dated- 5/12/2017

AWARD

By order No. L-20012/21/2013-IR(CM-I) dated 03/06/2013, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of Jharkhand Colliery Mazdoor Union for promotion in respect of Smt. Marsela Horo, Sr. Staff Nurse on par with Smt. Snehlata Kujur , Sr. Staff Nurse and drawal of wages not less than Smt. Kujaur and consequential benefits with retrospective effect from the management of Bhurkunda colliery Hospital under Barka Sayal Area of M/s. Central Coalfields Ltd is legal and justified ? to what relief the concerned work woman is entitled to?"

2. After receipt of the reference, both parties are noticed. But none appears from either side. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

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